

**“CRAMMING”: AN EMERGING TELEPHONE BILLING
FRAUD**

HEARING
BEFORE THE
PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FIFTH CONGRESS
SECOND SESSION

—————
JULY 23, 1998
—————

Printed for the use of the Committee on Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

COMMITTEE ON GOVERNMENTAL AFFAIRS

FRED THOMPSON, Tennessee, *Chairman*

WILLIAM V. ROTH, JR., Delaware	JOHN GLENN, Ohio
TED STEVENS, Alaska	CARL LEVIN, Michigan
SUSAN M. COLLINS, Maine	JOSEPH I. LIEBERMAN, Connecticut
SAM BROWNBACK, Kansas	DANIEL K. AKAKA, Hawaii
PETE V. DOMENICI, New Mexico	RICHARD J. DURBIN, Illinois
THAD COCHRAN, Mississippi	ROBERT G. TORRICELLI, New Jersey
DON NICKLES, Oklahoma	MAX CLELAND, Georgia
ARLEN SPECTER, Pennsylvania	

HANNAH S. SISTARE, *Staff Director and Counsel*

LEONARD WEISS, *Minority Staff Director*

LYNN L. BAKER, *Chief Clerk*

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

SUSAN M. COLLINS, Maine, *Chairman*

WILLIAM V. ROTH, JR., Delaware	JOHN GLENN, Ohio
TED STEVENS, Alaska	CARL LEVIN, Michigan
SAM BROWNBACK, Kansas	JOSEPH I. LIEBERMAN, Connecticut
PETE V. DOMENICI, New Mexico	DANIEL K. AKAKA, Hawaii
THAD COCHRAN, Mississippi	RICHARD J. DURBIN, Illinois
DON NICKLES, Oklahoma	ROBERT G. TORRICELLI, New Jersey
ARLEN SPECTER, Pennsylvania	MAX CLELAND, Georgia

TIMOTHY J. SHEA, *Chief Counsel and Staff Director*

DAVID MCKEAN, *Minority Staff Director*

PAMELA MARPLE, *Minority Chief Counsel*

MARY D. ROBERTSON, *Chief Clerk*

CONTENTS

Opening statements:	Page
Senator Collins	1
Senator Glenn	5
Senator Levin	6
Senator Brownback	7
Senator Durbin	18
Senator Cochran	18

WITNESSES

THURSDAY, JULY 23, 1998

Susan Grant, Vice President, Public Policy, National Consumers League	8
Lawrence E. Strickling, Deputy Chief of the Common Carrier Bureau, Federal Communications Commission	20
Eileen Harrington, Associate Director for Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission	22
Roy M. Neel, President and Chief Executive Officer, U.S. Telephone Association	26

ALPHABETICAL LIST OF WITNESSES

Grant, Susan:	
Testimony	8
Prepared Statement	47
Harrington, Eileen:	
Testimony	22
Prepared Statement	72
Neel, Roy M.:	
Testimony	26
Prepared Statement	100
Strickling, Lawrence E.:	
Testimony	20
Prepared Statement	55

APPENDIX

Exhibit List for July 23, 1998 Hearing

1. Charts prepared by the National Fraud Information Center:	
a. National Consumers League/National Fraud Information Center top Ten Telemarketing Frauds, 1997, January-June 1998	109
b. National Fraud Information Center Reports of Cramming: January-June 1998	110
2. a-g: Examples of consumer cramming complaints provided by the National Consumers League	111
3. Statement of Senator Thad Cochran, with attachments (copies of telephone bills showing examples of "cramming")	119
4. "Anti-Cramming Best Practices Guidelines," dated July 22, 1998	124
5. Memoranda prepared by John Neumann and Linda L. Algar, Investigators, Permanent Subcommittee on Investigations, dated July 21, 1998, to Permanent Subcommittee on Investigations' Membership Liaisons, regarding "'Cramming': An Emerging Telephone Billing Fraud"	140
6. Supplemental Questions and Answers for the Record, Susan Grant, Vice President, Public Policy, National Consumers League	150

IV

	Page
7. Supplemental Questions and Answers for the Record, Roy M. Neel, President and CEO, U.S. Telephone Association	152
8. Supplemental Questions and Answers for the Record, Eileen Harrington, Associate Director, Federal Trade Commission	159
9. Supplemental Questions and Answers for the Record, Lawrence E. Strickling, Deputy Chief of the Common Carrier Bureau, Federal Communications Commission	161

“CRAMMING”: AN EMERGING TELEPHONE BILLING FRAUD

THURSDAY, JULY 23, 1998

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:03 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Subcommittee, presiding.

Present: Senators Collins, Brownback, Cochran, Glenn, Levin, and Durbin.

Staff Present: Timothy J. Shea, Chief Counsel/Staff Director; Mary D. Robertson, Chief Clerk; Kirk E. Walder, Investigator; Linda Algar, Investigator (Cong. Fellow); John Neumann, Investigator (Detail, GAO); Lindsey E. Ledwin, Staff Assistant; Pamela Marple, Minority Chief Counsel; Beth Stein, Counsel to the Minority; Michael Rubin (Senator Brownback); Michael Loesch (Senator Cochran); Felicia Knight (Senator Collins); Jodi Johnson (Senator Nickles); Jeff Gabriel (Senator Specter); Harold Waltzman (Senator Brownback); Marianne Upton (Senator Durbin); Doug O'Malley, (Senator Lieberman); Melissa Mertz (Senator Durbin); Darla Silva (Senator Durbin); Jane Terry (Senator Cleland); and Myla Edwards (Senator Levin).

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. The Subcommittee will please come to order.

Today, the Permanent Subcommittee on Investigations will examine the emerging problem of telephone cramming. For those of you unfamiliar with the term, the Federal Trade Commission defines cramming as unexplained charges on a consumer's telephone bill for services that were never ordered, authorized, received, or used. This hearing will highlight the scope and nature of cramming, educate consumer about this practice, and determine what can and should be done to control this deceptive practice.

Like telephone slamming—the unauthorized switching of a consumer's long distance provider—cramming is theft by deception. Consumers are ripped off by fraudulent companies who are increasingly billing consumers through their local telephone bills for various charges, many of which may have nothing to do with telephone service. These charges are often vaguely described to avoid detection by the consumer. Indeed, unless a consumer reads his or her telephone bill very carefully, unauthorized charges may be paid routinely for months. The charges are often for very small

amounts, so they are easily overlooked. But the point is that the consumer does not owe the money for these charges, and they add up over time.

Our inquiry into the cramming problem is part of the Subcommittee's ongoing investigation into telephone billing fraud. Last December, the Subcommittee initiated an investigation into the practice of slamming. These hearings resulted in a report and tough new anti-slamming legislation introduced by Senator Richard Durbin and myself. Our anti-slamming bill was incorporated into legislation that the Senate unanimously passed in May.

At the Subcommittee's April 23 slamming hearing, the Chairman of the Federal Communications Commission warned "cramming is the next major consumer protection issue that we have got to deal with." The rapidly growing number of cramming complaints shows that concerns about this deceptive practice are warranted. The two Federal agencies responsible for enforcement in this area—the Federal Trade Commission and the Federal Communications Commission—have reported a surge in cramming complaints. The FTC has reported that cramming now ranks fifth among the complaints it receives, with 6,000 complaints since October of 1997. While the FCC has only begun receiving cramming complaints since late 1997, it has already received more than 15,000 complaints from consumers. In addition, the National Consumers League reported that in the first 6 months of this year, the number of cramming complaints it received surpassed the number of slamming complaints for the first time. In fact, cramming ranks first in the consumer complaints received by the League.¹

My office has received a number of complaints from Maine consumers about unexplained charges mysteriously appearing on their telephone bills. For example, one woman from Limington, Maine, wrote to complain that she was billed \$45 on her local telephone bill for a 2-minute 800-number call that she never made. A resident of Bucksport, Maine, called my office to complain that he was charged \$10.25 on his local telephone bill for a credit card that he does not possess. In addition, his mother was crammed with a \$25.75 charge for a personal 800 number which she had not ordered. This family has had particularly bad luck with cramming.

Cramming is simply wrong. We should have zero tolerance for this kind of fraud, which uses a vital utility like telephone service to deceive and rip off American families.

Now, many of my constituents have asked: How does cramming happen? The Subcommittee's investigation has found that some of the same deceptive marketing techniques that were used by companies to slam consumers are now being used to cram them. Some unethical companies are using negative option notices, contests, and sweepstakes entry boxes to trick consumers into giving so-called authorization for a calling card or paging services. Other particularly unscrupulous companies are simply submitting charges to telephone numbers obtained from directories or other lists without any contact with the consumer at all.

Prior to deregulation of the telecommunications industry, the only charges that appeared on a consumer's telephone bill were for

¹ See Exhibit No. 1a, which appears in the Appendix on page 109.

telephone services. Now, telephone bills are increasingly being used as an alternative to a charge card, to bill consumers for anything from telephone-related services, to club fees, to consumer goods. However, unlike credit card charges, there are no safeguards in place to protect consumers from fraudulent charges to their telephone bills.

Under the current system, any business can enter into a contract with a local telephone or billing company to charge consumers using their local telephone bills. Neither the local telephone company nor the billing company requires a business to provide any kind of proof of a consumer's authorization before billing consumers for miscellaneous charges. They simply trust that the business actually received a request from consumers for these charges and for these services.

However, when a consumer calls to complain to the local telephone company about an unauthorized charge, they are often not afforded that same trust. They usually are told to call the billing company that handled the charge or to call yet another company that originated the charge in order to get the fraudulent charge removed from their bill.

While local telephone companies trust the fraudulent companies by automatically billing for them, they have not extended that same kind of trust to consumers by issuing an automatic credit when the consumer advises them that the charge was not authorized. That is very unlike what happens if you have a fraudulent charge to your credit card.

I am very pleased to see that Bell Atlantic has now adopted a policy of automatically issuing a credit to consumers who call to complain that they have been crammed, and I hope that other telephone companies will also adopt this policy.

To be fair, there are many legitimate businesses billing consumers through local telephone bills for services that the consumer knowingly authorized and indeed wants. In this electronic age, it is not at all uncommon for a consumer to have local telephone service, long distance telephone service, paging, cellular service, voice mail, and Internet services—each being provided by a different company. Many consumers enjoy the convenience of having all of their telecommunications charges consolidated on one bill. We need, therefore, to make sure that legitimate companies are still able to provide consumers with the convenience of one bill as we crack down on cramming.

Telephone deregulation has brought consumers many benefits, including greater convenience, more choices, and in some cases, lower rates. But the deregulated market has also opened the door to unscrupulous individuals who will take advantage of unsuspecting consumers in order to make a quick buck.

To assist us in resolving this problem, we will hear this morning from two panels of witnesses. Our first witness is Susan Grant, the vice president of public policy for the National Consumers League. She will testify about the prevalence of cramming, provide some examples of consumers who have been crammed, and suggest some ways to control this problem.

Our second panel of witnesses consists of those who can help us solve this problem. It includes Larry Strickling from the Common

Carrier Bureau of the FCC, Eileen Harrington from the Bureau of Consumer Protection at the FTC, and Roy Neel, representing the U.S. Telephone Association. Mr. Strickling and Ms. Harrington will discuss what the Federal Government is doing to control cramming, as well as examine what additional regulatory or legislative changes need to be implemented. Mr. Neel will discuss what the telephone industry is doing to prevent cramming from happening in the first place, including the industry's recently developed anti-cramming guidelines. We look forward to hearing the testimony of all of our witnesses.

Before turning to our first witness this morning, I would like to first recognize Senator Glenn, the Ranking Minority Member of the Committee and of the Subcommittee, the Senator from Ohio.

OPENING STATEMENT OF SENATOR GLENN

Senator GLENN. Thank you, Madam Chairman, very much, and I want to congratulate you for holding this hearing, because I have become interested in these consumer fraud issues, including misuse of billings that hit every home in this country. I want to commend you for having the hearing this morning, and thank the witnesses also for being here.

Cramming, which we are going to be looking into today, is on the top of the list of complaints that consumers make about their telephone service. That is true in Ohio; I think it is true all over the country. And more and more consumers are complaining about these mysterious charges on their phone bills and about charges that are just clearly fraudulent if they take time to look at them. We are all busy. Sometimes you get the phone bill, it must be right, so you write the check and pay it—too often that is what we do.

Telephone consumers today—and that is most of us—all of us, in fact—we derive so many benefits from recent deregulation of the phone industry so we don't want to turn back the clock. Some of us didn't think that this opening up of the telephone industry that Judge Greene did back years ago maybe was the way to go because we have the best, the finest communication system in the world. But it has resulted in lower charges. Along with that, however, have come some problems also. Deregulation often results in at least some unscrupulous individuals finding loopholes in the system to make a profit at the expense of the American consumer.

We saw that happen with telephone slamming, a problem this Committee explored in April. We heard then about consumers who found that their long distance company had been changed without their permission, they didn't even know it. Sometimes they even signed up unknowingly with a different company than they thought they were getting service from.

I know we are working to remedy that problem. The problem we are looking at today is similar in that unscrupulous individuals have managed somehow to make fraudulent charges appear on our local telephone bills. In fact, I understand that after we put the heat on the slamming practice, some of the individuals who were engaged in slamming have now just redirected their profit-making schemes to the practice of cramming, which shows we have a very

flexible crook force out there. I don't know how we address that. Maybe we need a hearing on flexibility in crime or something.

I am not making light of it. It is a very serious issue. We all want to pay our phone bills, and we want to understand what we are paying for when we write our checks. And I know phone bills can be confusing. I look at the one at home that my wife goes over every month, and I am not quite sure how I read the thing sometimes. So the bills themselves are not exactly as clear as I think they should be, and maybe that is another area some of the companies could work on in helping make sure that you can recognize something when it is illegal on your phone bill.

I don't know quite how you do that, but the bills often are confusing, particularly with charges such as monthly fees and various taxes and charges for an increasing number of services and flex services. And if you use so much time it is a different rate and so much more based on the distances. I am not trying to turn back the progress that has been made, but it is confusing when people are trying to analyze their own phone bills. We have got to stop those individuals who would use our telephones to charge us for services we have never ordered.

So, Madam Chairman, I commend you for your efforts in putting this practice to a halt. Unfortunately, I have some other conflicts, as too many of us do around here. We have too many Committee assignments and too little time to meet them all. So I will be here for a little while, but I am sorry I will have to leave shortly.

Thank you.

Senator COLLINS. Thank you, Senator.
Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Madam Chairman, thank you, and thank you for holding these hearings, again, focusing on consumer complaints about fraudulent and deceptive telephone billing practices.

Cramming and deceptive billing in general on telephone bills is the number one complaint now that the Michigan Public Service Commission receives. They get 10 complaints a day, on the average, about improper billing, and the majority of those complaints now involve cramming.

It starts with a deceptive practice when somebody signs up for something thinking they are trying to sign up for this, but, in fact, unwittingly you are signing up for some telephone service, pager service, or what have you. So it starts with the deception of a consumer. And then that deception is implemented by a vague listing, usually on a telephone bill, a nondescript listing such as "enhanced services" that appears on a telephone bill. Frequently, a consumer being confronted with a telephone bill with pages of items on it doesn't catch it. Typically, this can cost a consumer from \$5 to \$40 a month.

I have a constituent, for instance, by the name of Eric Anderson who attended what he thought was a fun fair and was approached to enter a sweepstakes. He signed up for that sweepstakes thinking he was being given a chance to get an automobile for nothing. But then later on, an item appeared on his telephone bill from something called Hold Billing Service, and his mother started to make

inquiry: What was that item? He called up this so-called company, Hold Billing Service. They refused to cancel the item, were indeed very curt, hung up on him, and the customer here, the person who was paying the bill, then was confronted with a situation that was really totally intolerable.

The Federal Trade Commission has recently taken action against the Hold Billing Service for inducing customers to enter purported sweepstakes without disclosing that they were treating those sweepstakes applications as authorizations to bill packages of services to the telephone number that was filled in on the sweepstakes application form.

Now, the FTC is involved. The FCC is involved. Madam Chairman, under your leadership, I hope that we will look at legislation to strengthen our laws against these deceptive practices and to make certain that customers and consumers are not fleeced by these companies that would engage in those kind of practices. Again, we commend you for your leadership in this area.

Senator COLLINS. Thank you, Senator Levin.

Senator Brownback.

OPENING STATEMENT OF SENATOR BROWNBAC

Senator BROWNBAC. Thank you, Madam Chairman. I appreciate very much you holding this hearing and your leadership earlier on slamming and now on cramming. These are important consumer fraud issues.

I just want to briefly state that I am pleased to see that the industry and the FCC, perhaps because of this hearing, were able to reach an agreement working together that I think will help address some of this issue. I am delighted to see some panel members here to talk about it. I am happy to see that progress taking place. I think these hearings are an important step to try to move this issue on forward with. And so with that, I just want to add my congratulations to you and thanks for maturing the issue on forward and getting some things to start happening on an important consumer fraud issue.

[The prepared statement of Senator Brownback follows:]

PREPARED STATEMENT OF SENATOR BROWNBAC

Madame Chairwoman, thank you for holding this hearing today. I suppose that it is no mere coincidence that the FCC and the industry agreed on a voluntary set of guidelines to combat cramming within 24 hours before this hearing.

Cramming, as well as the slamming issue this Subcommittee has also addressed, are true consumer fraud problems. I am pleased that the industry and the FCC were able to reach an agreement, and that this issue will be resolved through voluntary, industry-created solutions rather than through the rulemaking process.

I certainly hope that these voluntary guidelines will weed out the bad actors. Advance screening, greater telephone company scrutiny of service providers, greater verification of end user approval of new services are all excellent ways of drastically reducing the number of customer complaints related to cramming.

I do have several questions, but I first want to thank the industry and the FCC for working together to find a non-governmental solution to this problem. I am a strong believer in the notion that allowing industries to police themselves often is more effective than imposing rules upon them.

Senator COLLINS. Thank you very much, Senator.

Senator Durbin has been a real leader in the fight against slamming, and he was the one who first brought cramming to my attention. So I am pleased to recognize him this morning.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. Thank you very much, Madam Chairman. I appreciate the initiative in calling this hearing.

The term cramming was coined by a Chicago reporter. He was doing a story on slamming and read his own telephone bill and realized, no, he hadn't been a victim of slamming, that is, unauthorized change in long distance service, but there were charges on his bill that he just couldn't explain. As he took a closer look, it turned out they were charges that he had never authorized.

He wasn't the only victim. In fact, there have been lots of them, and I am sure we will hear about that today.

In Orland Park, Illinois, Mildred Brudd found a \$35 charge on her telephone bill that she couldn't explain, so she started making phone calls, and one of the companies told her she had ordered the services as part of a contest to win a Jeep Cherokee. It turned out Mrs. Brudd never liked Jeep Cherokees and couldn't believe she ever could have entered such a contest. It took her 4 months and 50 phone calls to get the \$35 charge off her bill.

She wasn't the only one. In North Syracuse, New York—this is one that takes the cake—Martin Gaines finally saw a piece of junk mail on his desk and decided to open it. He noticed a line in the junk mail that said he would be charged \$4.95 a month for a phone card unless he responded. In other words, if you failed to respond, that meant you were signing up. That is an example of what is going on out there.

Today's phone bills have often become swamps of fraud where some scammers dump charges they hope will sink straight to the bottom and evade discovery. It is time to drain this consumer quagmire. People shouldn't need a microscope or a bloodhound to check their telephone bills. I am glad we are having this hearing.

Senator COLLINS. Thank you, Senator.

Our first witness this morning is Susan Grant, the director of the National Consumers League's National Fraud Information Center. I would like to welcome Ms. Grant for once again coming before the Subcommittee. She and the League have been extremely helpful to us as we have explored a number of consumer fraud areas involving telephone fraud. The National Consumers League was founded in 1899, and it is a nonprofit membership organization representing consumers across the country.

Pursuant to Rule VI, and I know Ms. Grant understands, all witnesses who testify before the Subcommittee are required to be sworn, so at this time I would ask that you stand and raise your right hand.

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. GRANT. I do.

Senator COLLINS. Thank you. You may proceed.

**TESTIMONY OF SUSAN GRANT,¹ VICE PRESIDENT, PUBLIC
POLICY, NATIONAL CONSUMERS LEAGUE**

Ms. GRANT. Good morning. My name is Susan Grant, and I am vice president for public policy at the National Consumers League and director of the League's National Fraud Information Center. As the oldest nonprofit consumer organization in the United States, the League is alarmed by this newest and most outrageous abuse of the telephone billing system—cramming. In less than 1 year, unauthorized miscellaneous charges on consumers' phone bills have become the top telemarketing scam reported to our National Fraud Information Center.²

We call it the case of the phantom phone charges because anyone who has a telephone can be victimized without even ever having any contact with the crammer. Actually, cramming is not new. We began to receive reports about mysterious charges such as voice mail and personal 800 numbers on consumers' phone bills a few years ago in connection with calls to 900-number pay-per-call services.

At our National Fraud Information Center, a toll-free hotline for consumers to call for advice about telemarketing and to report telemarketing fraud, we recorded these complaints under the category of pay-per-call services. However, by late October of last year, it became obvious to us that there were many different ways that these charges were appearing on consumers bills and that we needed to have a separate category for them.

In the last 2 months of 1997, we received about 200 cramming complaints, or about an average of 100 a month. But in the first 6 months of 1998, we have received 2,071 cramming complaints, an average of about 350 a month.

As the map shows,³ we hear from consumers in nearly every State about crammers located in nearly every State. In fact, we are now receiving twice as many cramming complaints as slamming, or unauthorized carrier switching, which currently ranks No. 3. We know that this is just the tip of the iceberg, however. Not all consumers who have been crammed complain to us, nor could our small hotline staff handle it if they did. Also, the numbers do not reflect the consumers who call our hotline for general advice and not to make a specific fraud report or those who don't even realize that they have been crammed.

Between cramming, slamming, and other telephone bill abuses, such as deceptive 900-number charges, we see a trend towards the telephone bill becoming the con artist's preferred method of bilking consumers. By the end of June, 47 percent of all payments that consumers reported making to us in fraudulent telemarketing transactions were made through their phone bills. Unfortunately for consumers, however, they don't have the same dispute rights in these instances as they would if the charges were made on their credit card accounts.

Cramming charges are relatively small, in the range of \$5 to \$40. But since most of them are recurring monthly charges, and in light

¹The prepared statement of Ms. Grant appears in the Appendix on page 47.

²See Exhibit No. 1a, which appears in the Appendix on page 109.

³See Exhibit No. 1b, which appears in the Appendix on page 110.

of the fact that consumers often don't notice them right away, they can add up to significant amounts. We have received cramming complaints from consumers about totals in dispute of more than \$2,000. In the first 6 months of this year, the average amount of disputed cramming charges reported to us has been \$42 per consumer.

We believe that cramming has become more prevalent than slamming because it is easier to do. In slamming, the con artist makes money by charging for the calls that consumers make, usually long distance calls, and in order to do so, the con artist has to actually provide the telephone service. Even if it is a reseller, it has to purchase the phone service from another telephone carrier.

But cramming is phantom billing because the con artist makes money from fees for miscellaneous services that may never have been provided. In fact, it isn't really necessary to have the facilities to provide voice mail, paging, personal 800 numbers, or other miscellaneous services in order to arrange to bill consumers for them.

Cramming is pure profit through fraud and deception. It is also not necessary for the crammer to have had any prior contact with the consumer. All that is needed is the person's phone number. And people's phone numbers are widely available. Directly or through a billing aggregator acting on its behalf, the crammer simply represents to the telephone company that the consumer has agreed to purchase these services, and the company bills on its behalf.

Therefore, it is not surprising that many consumers who contact us had no idea that they had been crammed until they discovered the charges on their bills and have no idea how it happened. When consumers think they know how they were crammed, the most common method reported to us is through contact with a 900 number or other pay-per-call service. In many instances, these are psychic hotlines that have advertised free readings. Consumers call the numbers, and whether the readings turn out to be free or not, later monthly charges start to pop up on their phone bills or personal 800 numbers, paging, voice mail, or other unspecified services, sometimes for club memberships.

The second most frequent source of cramming reported to us is contest entry forms that consumers fill out in the hope of winning a car or cash or some valuable prize. There may be something on the form that says that they are signing up for some type of service, but if there is, it is in fine print so minuscule that consumers would need a microscope in order to see it.

Negative option notices are yet another method of cramming where consumers get solicitations that look like junk mail, toss them unopened, only to discover later that they have been automatically enrolled in services for which they are being billed on their telephone bills, and this has happened because they didn't contact the company to say that they wanted to cancel.

Here are some examples from the complaints that we have received at the National Fraud Information Center of various ways that consumers have been crammed.

A Texas woman got a call from a company asking to verify her address. She said yes, that is my correct address, and later began to get unauthorized charges on her phone bill. When she called the

company to dispute them, she was told that her "yes" answer was authorizing the services for which she had been billed.

A telemarketer offered to place ads on the Internet for a woman from Ohio. She said no, but she was crammed anyway for unauthorized Internet services.

A Maryland man got a phone solicitation for long distance service. As a good consumer, he asked for the information to be sent to him in writing. He never received anything, but he did start to receive charges on his bill for paging services.

A telemarketer called a New York woman, offering her the opportunity to join a travel club. She asked for written information, which she did receive, but she never acted on it. Nonetheless, charges for club membership began to appear on her telephone bill.

A New York man got a letter from a company informing him that he would be charged for a personal 800 number unless he called the company to cancel. He tried to call twice and was left on hold for a total of 2 hours and finally gave up.

A man in Virginia got a call from a company telling him he had won a trip to Las Vegas. He agreed to pay a \$20 processing fee in order to get this trip. But then he began to receive unauthorized charges on his phone bill for voice mail. When he called to dispute the charges, he found out that his long distance service was also being switched.

A Texas woman got a letter in the mail welcoming her to a plan to buy merchandise at discounted rates and announcing that the \$5 monthly charge would be billed through her phone company. But she had never enrolled in this program.

People tell us that they have also been crammed by calling 800 numbers in response to messages left on their answering machine. In one of the most creative cramming cases reported to our hotline, a man called a company that advertised on television for coupons that you could use to get discounts off of veterinarian services and pet-related products. He agreed to pay \$20 for the coupons. But when he tried to use them, the vendors rejected them. Even worse, he began to get charged \$10 a month on his phone bill for a pet club membership. When he called to dispute the charges, he was told that there was a recording of his agreement, but all he had agreed to was to pay \$20 for the coupons, and they turned out to be worthless.

One of the biggest problems with cramming and the reason why it is so successful is that it is hard for consumers to spot these charges. Phone bills are confusing enough with all sorts of taxes and other fees, so cramming charges may look like just another part of your regular bill. They are often described in vague terms, such as "monthly fee," "call manager," "basic access," "monthly service fees," "special plan," etc.

Sometimes the companies making these charges even use names that sound like phone services in order to make it harder for consumers to detect them on their bills. Even when the charges are more descriptive, people may not notice them right away. The names of the service providers do not appear on the first page summary of your bill, making it necessary to scrutinize every single page in order to see what you are being billed for. In our busy lives, many of us simply look at the total amount due and pay it.

Once consumers discover they have been crammed, their problems are only just beginning. When they call the number on their bill for disputes, it is usually the crammer or the billing aggregator acting on its behalf. They are often left on hold for inordinate amounts of time or get incessant busy signals or only reach a recorded answering service. If they do manage to talk to a live person, they are often lied to. They are promised refunds and don't get them. They are told that they authorized the charges, and then they are presented with documentation such as forged signatures, doctored audiotapes, and sometimes they are refused any documentation at all. They are threatened with loss of their phone service if they don't pay and with their credit reports being ruined.

In desperation, they turn to the local phone companies from whom they received the bills, and until recently, they didn't get as much help there as they should have. Often they were referred back to the crammers, and in many cases the local phone companies, because their relationships may have only been with the billing aggregators, couldn't even tell the consumers who the actual service providers were or how to reach them. They didn't have that information, which made it very difficult for consumers to complain and also for law enforcement agencies to pursue these matters.

I am happy that at the urging of the FCC the local telephone companies are now working collectively to respond to the cramming crisis, and they have also been working, some of them, individually.

For example, Ameritech is overhauling its bills to simplify them and to actually list the companies that they are billing for on the front page of the bill.

Bell Atlantic announced earlier this month that it is removing disputed charges the first time that a consumer calls, even if the consumer hasn't yet contacted the crammer, and yesterday announced that it was going to develop a blocking service.

Bell South announced a temporary moratorium from accepting any new billing agreements for these miscellaneous services until it can put good procedures in place to screen them.

And, collectively, the local phone companies have drafted these best practices which encourage the adoption of procedures to curb the problem of cramming and give consumers more protection.

We applaud these efforts, and we know that some of the billing aggregators are also discussing amongst themselves voluntary standards that they might adopt.

But at the root of this problem is the fact that consumers have lost control over their telephones. At our fraud center, our counselors tell us that when consumers call about cramming, they are more incensed than consumers who call about any other type of telemarketing fraud, and that is because they see themselves as innocent victims whose privacy has been invaded and whose phone bills have been hijacked for services that they never agreed to. They don't understand how this can happen, and they want control back over their telephone bills so that they can stop it from happening.

I know I have exceeded my time, but I would like to just briefly run down the ten suggestions that we have given for how cramming can be stopped and consumers given more control.

Senator COLLINS. Certainly.

Ms. GRANT. Thank you.

The first suggestion is to ban deceptive methods for selling miscellaneous services. They should not be promoted through contest entry forms, pay-per-call lines, or negative option solicitations.

Second, charges should only be allowed on telephone bills for telephone-related services. Consumers don't expect charges for club memberships or other non-telephone-related services to be on their phone bills, so they don't look for them.

Third, phone companies should be required to get information about the service providers and the billing aggregators because they have a responsibility to know who they are billing on behalf of and that the services for which they are billing are legitimate.

Fourth, we need to impose strict liability on the billing aggregators. They must share the responsibility for the service providers that they represent.

Fifth, we would like to suggest that consumers be notified by the local phone company as soon as miscellaneous—charges for miscellaneous services have been requested to be put through to their phone bills. This is really the single most important thing that Congress could do. If consumers received an advance notice saying this is an important notice about your phone service, this company—naming the service provider—has requested that we bill you for this service, describing the service, the cost, whether it is a monthly service or whatever the other terms of it are, and please notify us by a certain number of days if you did not authorize this service, it would nip a lot of cramming cases in the bud. It would prevent these charges from ever getting on consumers' phone bills to begin with, and it would also give the telephone companies quick information about providers that may be abusing the telephone billing system.

Sixth, we would like to have Congress require truth-in-telephone-billing. Charges for miscellaneous services should be clearly described along with the identities of service providers, any billing aggregators acting on their behalf, and their locations.

Seventh, consumers should be provided with dispute rights similar to the rights that they have for disputed 900-number charges. They need to be able to dispute these charges and have a process for doing so, without fear of losing their phone service or having their credit ruined.

Eighth, States and consumers should have the right to sue crammers in Federal court. This would make it easier to stop deceptive and abusive practices wherever a company may be operating and to get redress for abuses.

Ninth, levy serious penalties against crammers. There should be stiff fines and penalties for violations, and repeat offenders should be treated as criminals.

Tenth, give consumers better control. Telephone companies should be required to develop mechanisms like blocking or PIN number systems that consumers can use to control who adds charges to their telephone bills and for what.

In summary, the free and competitive marketplace only functions properly if consumers are able to make informed choices about the products and services that they want to buy. We need to ensure that it is the consumers who are actually making those choices, not

phantoms who are billing them for products or services that they never requested.

We look forward to working with this Subcommittee and Congress and members of the telephone industry to stop this egregious abuse of the telephone billing system and preserve the integrity of the telecommunications marketplace.

Thank you.

Senator COLLINS. Thank you very much, Ms. Grant.

When you were talking about people calling 1-900 numbers for psychic readings, I kept wondering whether any of those psychics predicted that the consumer who was calling would soon be a victim of telephone fraud.

Ms. GRANT. I don't think so.

Senator COLLINS. I kind of doubt it.

One of the purposes of our hearing today is to get a better understanding of the specific techniques that crammers use and also to educate consumers on what to look for when they review their telephone bills.

I would like to use some specific examples—and we have blown up some telephone bills—of how individuals and their families were crammed so that we can get a better understanding of how these scams work.¹ We have enlarged several telephone bills, and there are copies that have been provided to the Members and at the press table. I think there are some additional ones if people in the audience can't see it that well.

These, I understand, are actual bills that have been sent to you at the National Consumers League in support of consumers' complaints about telephone cramming. I would like to have you explain for us how the fraudulent charges are listed on these bills and how consumers can try to identify fraudulent charges and, indeed, the difficulty of their doing so.

Let's look at the first exhibit. It is Exhibit 2a. Do you have a smaller version, or can you see that?

Ms. GRANT. I can see it.

Senator COLLINS. You can see that? Your eyes are better than mine. How did the consumer get crammed in this case?

Ms. GRANT. As in many of the cramming complaints that we receive, the consumer had no idea how he came to have these charges on the bill. But what is particularly interesting about this one is that it appears that the name of the company making the charge is Axces. As you may know, consumers do get a legitimate access charge that is mandated by law on their phone bill. But this isn't that access charge. This is a charge by a company with the name of Axces, and it would be very easy for a consumer to mistake this for the access charge that is a part of the regular bill.

Senator COLLINS. That is what troubles me so much about this bill. It would take an extremely alert consumer to not think that that is the standard monthly access charge that appears on all of our long distance bills. And it seems very clear to me that the name Axces—with the unusual spelling but, still, the word "access"—was chosen specifically to deceive the consumer.

Would you agree with that in looking at this?

¹ See Exhibit No. 2a-2g, which appears in the Appendix on page 111.

Ms. GRANT. I would speculate that is the reason for the choice of name.

Senator COLLINS. It reminds me of when we were having our hearings on slamming, and we found that there were companies, long distance providers, who chose names like Phone Bills or Telephone Calls or Long Distance Services, which were the names of the companies but they looked like they were headings on the phone bills. And I think when we tell consumers you have got to look very carefully at your bill, that is certainly true, but there should be some burden on the industry to make sure that there isn't deliberate deception that is going to fool all but the most astute consumer.

Ms. GRANT. I agree. And in the best practices that the local telephone companies are considering, one of them is that each company will decide on standard text phrases to describe the services. And that would be helpful.

Senator COLLINS. The next exhibit that I am going to show you, which I think in our exhibits is Exhibit 2c., I would ask for it to be put up. Again, could you explain what happened in this case and whether this is a typical example of a local phone company billing for non-telephone-related services?¹

Ms. GRANT. This is a typical example of a non-telephone-related service being billed through the telephone bill. Again, the consumer does not know how this happened and does not have a debit card from anyone that they think is related to this telephone bill.

Senator COLLINS. So this is an example of a charge being put on a telephone bill that has absolutely—appears to have absolutely nothing to do with telephone service.

Ms. GRANT. That is right.

Senator COLLINS. The next exhibit I would like to show you, which is Exhibit 2g. on our list,² is another one that I think aptly expresses the consumer's frustration. This is a blown-up version of the actual bill sent to you complete with the consumer's comment.

Ms. GRANT. Yes.

Senator COLLINS. Could you walk us through this one as well, please?

Ms. GRANT. This is another one where the consumer does not know how this happened, and obviously, he had a comment to make wondering what this was. And I have no idea what Extensor Services is. I don't know whether it is the name of a company—Extensor Systems. I don't know whether it is the name of a service. I have no idea. Obviously, the consumer does not.

Senator COLLINS. OK. Thank you.

I wanted to bring those up because I think it shows the variety of phantom charges that are appearing on consumers' bills and the difficulty that consumers would have in identifying them.

I also think that it is significant that, by and large, these charges are small amounts. If a consumer saw an unexplained charge for \$100, it would certainly catch the consumer's attention. But if a consumer has, as in the first case, a monthly access fee of \$3, they are much more likely to believe that it is a legitimate charge.

¹ See Exhibit No. 2c. which appears in the Appendix on page 113.

² See Exhibit No. 2g. which appears in the Appendix on page 118.

Is that an accurate assessment of what is going on here?

Ms. GRANT. I think it is, and it is another difference from slamming, because in slamming, as you know, what often prompts the consumer to realize that he or she has a different telephone carrier is that the long distance charges are two, three, even four times the amount that their original carrier would have charged for the same services. But with these cramming charges, they are so small that they can easily slip by without the consumer noticing them.

Senator COLLINS. All of the reports that we have had, whether it is from Federal agencies, State agencies, or your private organization, suggest that cramming has just exploded in the last 6 months. Why do you think that is so? Do you think that it is, as Senator Glenn suggested, that as we have cracked down on slamming, the same con artists have now moved to cramming, or is something else going on?

Ms. GRANT. We do notice some of the same telephone company—or, not telephone company, but some of the same service provider names and billing aggregator names in connection with cramming as we have seen with slamming. We have seen combinations of cramming and slamming. Some of these companies are also familiar to us from 900-number problems.

I really think that the reason why it has escalated so much is that crooks have discovered that it is so easy to do and so inexpensive for them to do. It is pure profit.

Senator COLLINS. It doesn't require any sort of special equipment or expertise.

Ms. GRANT. No. You and I could set up shop tomorrow to do this.

Senator COLLINS. But we never would, I would hasten to say.

As you know, the industry has recently issued some voluntary guidelines. They just were issued yesterday. I don't know whether you have had the opportunity to review them in depth, but could you give us your initial impression on whether or not you believe that they go far enough and will be effective?

Ms. GRANT. I think they are a really good first step, and I congratulate the FCC and the companies for doing this. However, I do have some concerns, and the uppermost concern that I have is the lack of uniformity, because what these guidelines say is that each company will decide itself whether to adopt any or all of these practices and, in adopting a practice, how to implement it.

To use thresholds as an example, one of the suggested practices is that the local telephone company sets a threshold for numbers of complaints that would trigger severing its relationship with a service provider or a billing aggregator. But it would be up to each company to decide what that threshold would be.

My concern is that you have the possibility for unequal consumer protection in different parts of the country that are served by different companies, and also different thresholds for the same service provider in different parts of the country. So I would like to see some minimum standards that they all agree to adopt, and then if a particular company wants to go further than the minimum, more to their credit.

Senator COLLINS. Thank you.

Senator Durbin.

Senator DURBIN. Thank you, Madam Chairman.

Ms. Grant, it is good to see you again, and thank you for your testimony.

Ms. GRANT. Thank you.

Senator DURBIN. I am sorry to learn that Illinois ranks only behind California in the number of complaints that have been lodged with your agency for this type of consumer fraud.

I want to make sure that it is clear on the record and in my mind how this—who the players are here. There is a service provider, if that is what we can call those who offer a service. They notify a clearinghouse which gathers bills on each of us, and that clearinghouse then does business or sends the bills to us through the local exchange carrier. And I guess my question really gets down to the responsibilities of each party involved, assuming that the first one, the service provider, is out to defraud.

Is there any requirement of proof now that you know of when a service provider notifies a clearinghouse that there is a charge to be added to a monthly bill?

Ms. GRANT. No, not that I know of.

Senator DURBIN. So it is simply a matter of this could be a cram artist, a service provider, notifying a clearinghouse that in my situation, my telephone number and my hometown, I should be billed for the following service.

Ms. GRANT. That is right.

Senator DURBIN. The clearinghouse then passes that information along to the local exchange carrier, and in most instances—or in any instance, does the local exchange carrier require any proof at that point that the customer authorized the original service?

Ms. GRANT. No.

Senator DURBIN. I have noticed in my State of Illinois, the attorney general, Jim Ryan, has been aggressive on this, and I certainly want to salute him for it. And several things that they have done may be worth considering on a national basis.

First, they have totally banned the use of sweepstakes and promotions for the initiation of these services, and I think some of the material that we have at this hearing indicates how people are often deceived into signing up for a trip to Las Vegas, or whatever it is, and end up so-called authorizing these services.

Do you know of any other States that have done this in terms of prohibiting sweepstakes as a basis for this new service?

Ms. GRANT. I know that some other States have considered doing that, and I don't know if any of those prohibitions have actually been enacted yet.

Senator DURBIN. Also, in our State, we have passed legislation which requires a more customer-friendly telephone bill. I think this would be a great help. It just strikes me that for most people, when they receive that stack of paper, they quickly turn to the front page or back page to find out how much they owe, and if it sounds vaguely consistent with what they have been paying or what they expected to pay, they don't plow through every line on every page.

I assume that is your experience, too, with consumers who call in.

Ms. GRANT. Yes, and I would like to note that your State has been in the forefront of acting against cramming and crammers and is to be congratulated for that.

Senator DURBIN. Wouldn't it be helpful to a consumer if there was a page which said "new charges," something that is showing up on the telephone bill for the first time—

Ms. GRANT. It sure would.

Senator DURBIN [continuing]. And then below each of the new charges was the name of the so-called service provider and a telephone number where they could be reached? I mean, the customer is at least getting a forewarning, here is something new on your phone bill, and here is the company that is providing this service.

Ms. GRANT. I think it would be helpful. The reason why we have suggested, however, a notice separate from the bill and that would precede the bill is, first of all, as you know, consumers' phone bills are already pages long, and I don't know, even if the billing format is simplified, that they can be reduced significantly in how many pages they are. And, second, at that point, it is already on the bill. We would like to keep it from being on the bill if we can at all.

Senator DURBIN. Tell me how the mechanism would work in your mind in terms of this pre-authorization before it comes to the bill. Would the customer—service provider, rather, be required to send that notice to the customer before they can notify the clearinghouse to add it to the bill?

Ms. GRANT. We want the notice to come from the consumer's local phone company, not the service providers. We know from the negative option types of solicitations that if consumers get mail from a company whose name they don't recognize, they may think that it is just junk mail and not even open it and throw it away. We would like to see a notice come from their local phone company at the point where it has been asked by the service provider to institute billing for the service, saying this is a special notice about a change or an addition to your phone service that would get the consumer to open that envelope, and then inside it would say we have been asked by Axces to bill you for voice mail, it is a \$5 monthly charge, let us know by such-and-such a date if you never authorized this service.

Senator DURBIN. Of course, that is an expensive undertaking for your local exchange carrier to send this notification, to accept word back from the customer. Who is going to pay for it?

Ms. GRANT. It could be built into the cost of the billing arrangements that they contract for. After all, they are not providing this billing for free. This is a business relationship between them and the service provider, either directly or through a billing aggregator, and they are charging for that service. So the cost of this notification, whether it is done by mail or even done by telephone, if it is a small telephone company in a small area, could be built into the contractual relationship that they have with the service provider.

Senator DURBIN. And if I am running a local exchange carrier, in addition to the cost factor I want to know the liability factor. How are you going to protect me so that ultimately if the customer says, despite all this, this wasn't authorized, I am going to sue everybody in sight? How do you protect the local exchange carrier that is trying to play the role of middleman?

Ms. GRANT. If there were clear dispute rights that set forth who is responsible for what, as there are with 900-number charges, I think it would be helpful. We certainly don't want the local phone

companies to be liable if they shouldn't be, if they didn't realize that they were billing for a crammer. We want to hold the crammer responsible and the billing aggregator working on its behalf.

Senator DURBIN. I thank you for your testimony. I think we have learned from almost every venture into deregulation and free market that several things do occur, not the least of them are efforts by some to take advantage of this Wild West atmosphere and make a buck, sometimes legitimately and sometimes not. There also seems to be a consolidation of the companies that do business once we go into a free-market atmosphere, and that is the case with telecommunications as well as others.

I think we have to be vigilant to protect this free-market opportunity, but to do it in a way that gives the consumer a fighting chance. I am glad you are here helping. Thanks.

Senator COLLINS. Thank you, Senator.

It is now my pleasure to turn to Senator Cochran. Senator Cochran has been very concerned about this problem, I know from our discussions, and I welcome him here this morning.

OPENING STATEMENT OF SENATOR COCHRAN

Senator COCHRAN. Thank you very much, Madam Chairman.

We appreciate very much your assistance to our Subcommittee today. Your being here and testifying as you have is very helpful, giving us an opportunity to more fully understand the magnitude of this problem and how serious it is and how important it is that Congress and Federal agencies work hard to try to put a stop to this very fraudulent and difficult and serious problem.

I just happened to be in my Oxford, Mississippi, office on Monday of this week, and the phone was ringing. My staff was tied up doing other things. I picked up the phone, and it was a constituent calling to talk about this problem.

Clarence A. Hall in Jackson, Mississippi, had called to tell me one of my staff members, that he knew, had been working on this issue—about the specific problems that he had encountered. Three different charges had been made, one against his own telephone bill, one against his mother's, one against a daughter's line that he assumes responsibility for, but it just happened all at once, and he has been trying to find a way to get it straightened out.

He knows all three charges. He has checked into all three of them. One was sort of a fictitious name. He still does not know what the letters are. It is just an acronym that was on the bill.

I am going to ask that the copies of the bills be put in the record to just illustrate another complaint, another real problem, but I assured him that we were trying to do something about it, and coincidentally, this hearing was coming up and I got permission to use his name and to put these copies in the record.¹

I know our other witnesses are going to talk about what the agencies are trying to do about this and what the options are for solving it, but I am convinced that we have got to act. Something has to be done, either legislation is required to further strengthen the Federal laws on this subject or the agencies have to take a more aggressive role in trying to do something about this.

¹ See Exhibit No. 3 which appears in the Appendix on page 119.

The individual victims are really helpless, and that is the point. They are turning to Members of Congress and to State regulatory agencies and State legislators and others to get something done, and they are very impatient and aggravated about it and I do not blame them a bit. This is outrageous.

If there is not a law against it, there certainly ought to be a law against it and so severe that those who are punished know that they have committed a serious crime. This is not just something that we are going to take very casually. So everybody ought to understand that.

So I am glad the Chairman has called the hearing, and it is very timely, very appropriate, and we are going to work hard to get this problem solved.

Senator COLLINS. Thank you, Senator Cochran, and we would be glad to put your constituent's example into the record. It will help us learn of yet another example of this cramming going on.

Thank you very much, Ms. Grant. We may have some additional questions which we will submit in writing to you.¹ The hearing record will remain open for 10 additional days. Thank you.

Senator COLLINS. I would now like to ask our second panel of witnesses to come forward. They will describe for us what the Federal Government and the telecommunications industry is doing to control cramming.

The first witness, Lawrence E. Strickling, is the deputy chief of the FCC's Common Carrier Bureau. The Common Carrier Bureau is responsible for implementing the FCC policies concerning telephone companies that provide long distance and local service to consumers. This bureau is also responsible for taking enforcement actions against companies that violate FCC regulations, including the unauthorized charges that are being billed to consumers.

Our second witness is Ms. Eileen Harrington, the associate director for marketing practices at the FTC's Bureau of Consumer Protection. The Bureau of Consumer Protection's mandate is to protect consumers against unfair, deceptive, or fraudulent practices.

As part of its mandate, the bureau is charged with taking enforcement actions against companies that engage in deceptive marketing practices, including cramming.

Our third witness is Roy Neel. Mr. Neel is the President and CEO of the U.S. Telephone Association. The USTA represents more than 1,200 small, mid-sized, and large local telephone companies who bill consumers for various telephone and other miscellaneous charges. In that capacity, Mr. Neel has been an active participant in the telephone industry's efforts to develop voluntary guidelines to prevent cramming.

Pursuant to Rule 6, all witnesses are required to be sworn. I would ask that you would stand and raise your right hand.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. STRICKLING. I do.

Ms. HARRINGTON. I do.

Mr. NEEL. I do.

Senator COLLINS. Thank you.

¹ See Exhibit No. 6 which appears in the Appendix on page 150.

We look forward to hearing from each of you today. Your written testimony will be made part of the hearing record. We will ask in the interest of time and to allow time for questions that you limit your oral presentations to 10 minutes each.

You will notice in front of you is a lighting system. Please be aware that approximately 1 minute before the red light comes on signifying the end of the 10-minute period that you will see the light turn from green to orange. So orange is your warning light asking you to wrap up your testimony.

Mr. Strickling, we are going to start with you. Thank you.

**TESTIMONY OF LAWRENCE E. STRICKLING,¹ DEPUTY CHIEF,
COMMON CARRIER BUREAU, FEDERAL COMMUNICATIONS
COMMISSION**

Mr. STRICKLING. Thank you, Chairwoman Collins and Members of the Subcommittee, and I want to thank you for the opportunity to testify here this morning on this growing consumer fraud known as cramming.

I am the deputy chief of the Federal Communications Commission's Common Carrier Bureau, where I oversee the consumer protection work of the bureau's Enforcement Division. And I do not want to duplicate the descriptions of cramming already provided by Susan Grant, except to add that about each month, we receive 300 written complaints from consumers at our Consumer Protection Branch, and our National Call Center in Gettysburg receives about 2,000 cramming-related inquiries each month.

The Commission now ranks cramming, right up there with slamming, as one of the most serious consumer problems in the industry today.

What I would like to spend my time on this morning is the recent action that the FCC has taken to combat cramming. You will remember that in April when Chairman Kennard was appearing before this Subcommittee on slamming, he announced that he was calling the local telephone companies to come together with the Commission to develop a voluntary industry code of conduct to stop cramming.

I am very pleased to report, Madam Chairwoman, that yesterday those guidelines were completed, just 2 months after the first meeting of the telephone companies.²

I want to emphasize that the speed of this process was the direct result of Chairman Kennard's choosing to use a nontraditional way to attack this problem. We recognized that consumers needed a rapid response from the Commission in order to stop the spread of cramming, and we knew that traditional regulatory tools, such as a rulemaking, would have taken months to complete and would have left consumers without the protection they need while this process would have dragged on.

We congratulate the telephone companies for their speedy response to the Chairman's challenge, and we will look for opportunities in the future to use this type of collaboration to solve new consumer protection issues as they arise.

¹ The prepared statement of Mr. Strickling appears in the Appendix on page 55.

² See Exhibit No. 4 which appears in the Appendix on page 124.

Turning to the substance of the guidelines themselves, I would like to highlight three specific best practices that the bureau thinks will have a major impact on reducing cramming.

First and foremost, to stop cramming, we have to stop the bad actors from getting the money for their fraudulent charges, and we are very pleased that the guidelines suggest that when a customer calls to complain that he or she has been crammed that the telephone company will provide an immediate credit on the bill so that the customer does not have to pay the fraudulent charge and then try to recover his or her money later on.

Second, the guidelines recommend that the telephone companies more comprehensively screen the background of service providers who want to use the telephone bill and the products and services they want to offer. By reviewing the marketing and advertising materials, the telephone companies should be in a good position to refuse to bill for deceptive services before they are ever offered to consumers.

The sweepstake forms that we have seen this morning, for example, that practice is illegal under our slamming guidelines, and the carriers have come together and have said that when they see that practice being used for non-telecom-related services that they would refuse to bill for those as well, and we think that is an effective way to get at this problem.

And if they do go ahead and accept a service that ends up drawing lots of complaints, the guidelines recommend setting thresholds that trigger action by the companies to stop the problem, even termination of the billing contract where that is justified.

Third, we are particularly pleased that the telephone companies now acknowledge that consumers should have more control over what is put on their telephone bill. Yesterday, Bell Atlantic announced that it will be offering a billing block to its customers in the near future, and I understand other local telephone companies are considering similar plans.

I must add that these best practices, while very thorough, are not intended to be the complete solution to the problem of cramming.

As I have described in more detail in my written testimony, the local companies are only one link in the billing chain, and the other links which Senator Durbin brought out, the clearinghouses and the service providers, must also deal with this problem.

And to this end, we are encouraged that just last week, a group of the largest billing clearinghouses announced their own policies to prevent cramming, and I understand that a number of service providers are also preparing their own guidelines.

These ongoing efforts underscore the growing recognition that the legitimate members of the industry need to be part of the solution, not part of the problem.

These guidelines are not the end of the process. We will be monitoring the implementation of anti-cramming programs by the telephone companies, and we will pay close attention to the level of consumer complaints that we continue to receive at the Commission.

We do expect the level of complaints to drop substantially as the companies implement various parts of the guidelines. If it does not

happen, however, we stand ready to take any additional action that might be necessary to stop this fraud.

As the Chairwoman knows, we are prepared to issue new slamming rules. We are evaluating right now whether to extend the verification rules that currently exist in our slamming guidelines and slamming rules to non-telecom services such as those that are involved in cramming.

We are also in the process of preparing a truth-in-billing notice to the industry, and we are evaluating whether some of these principles of the bill format ought to be included in that.

We clearly see the choice of the name of a provider, as it has been reflected in some of the examples presented here today, as a factor in our determination as to whether a consumer was likely misled by the practice. We see these companies when we send complaints to them for response sending back the form that indicates a consumer may have signed it or otherwise apparently authorized the service, but we think that the choice of the name of the provider and the choice of the method used to sell this service has to be evaluated in determining whether or not that signature truly reflects a knowing authorization of service.

Before I close, I would like to discuss two legislative proposals that we think would greatly add to the fight against cramming.

First, Congress should extend the jurisdiction of the Federal Communications Commission to reach the practices of billing clearinghouses and service providers when unauthorized charges appear on consumers' telephone bills. This proposal at least to cover the billing clearinghouses is included in the slamming bill that was passed by the Senate earlier this year, and we hope it is enacted into law this term.

Second, we recommend that Congress clarify that the Federal Trade Commission has jurisdiction to ensure that common carriers engage in fair advertising and marketing practices and end the confusion that has been described in the FTC's testimony.

We recognize that the combined effect of these recommendations, if enacted, might result in an overlap in jurisdiction between the two agencies, but I believe that each commission is committed to working with the other, and frankly, this is an area where the more cops on the beat, the better.

I thank you for the opportunity to testify. I look forward to working with Congress in resolving this problem, and I look forward to answering any of your questions this morning.

Senator COLLINS. Thank you, Mr. Strickling. Ms. Harrington.

**TESTIMONY OF EILEEN HARRINGTON,¹ ASSOCIATE DIRECTOR
FOR MARKETING PRACTICES, BUREAU OF CONSUMER PRO-
TECTION, FEDERAL TRADE COMMISSION**

Ms. HARRINGTON. Thank you, Senator Collins and other Members of the Subcommittee.

I am Eileen Harrington with the FTC's Bureau of Consumer Protection, and I am privileged to appear this morning to present the Commission's testimony which has been submitted in its full text for the record.

¹ The prepared statement of Ms. Harrington appears in the Appendix on page 72.

There are three points that I want to emphasize this morning. First, unauthorized billing abuses have plagued other new billing and collection systems, and the FTC has a long history of playing a key role in remedying those problems as they emerge.

Second, the Congress has provided the Federal Trade Commission with authority and tools to impose some regulatory solutions for these problems, and the FTC is presently in the process of using that authority and those tools to do just that.

And third, the FTC has tough law enforcement authority granted to it by the Congress to attack this kind of deceptive conduct, and we are using it to attack cramming.

The FTC has a long history of attacking the problem of unauthorized billing in various billing and collection systems, particularly in the early years of the implementation of those systems.

In fact, the cramming problem that we address today is reminiscent of billing abuses that surfaced in the early years of regional and bank card, credit card systems.

Back in the 1960's unauthorized charges on credit card statements nearly destroyed the bank card system. Then, credit card issuers inundated consumers' mailboxes with unsolicited credit cards. Too often, the unsolicited cards were stolen right out of the mail either from the consumer's mailbox or somewhere along the line in the mail delivery system.

Unsuspecting consumers receive credit card bills at the end of the month from credit card issuers they had never heard of, for goods they had never purchased, and they had no recourse except to either pay the charges or face legal collection actions. Does this sound familiar?

When industry failed to correct these problems and consumer confidence in this new bank card system hit rock bottom, the Congress stepped in with balanced consumer protection legislation. Then it was the Fair Credit Billing Act which amended the Truth in Lending Act, and importantly, fairly apportioned risks and responsibilities associated with the credit card billing system.

The Fair Credit Billing Act limited consumer's liability for unauthorized charges and gave them important rights to dispute charges that appear on credit card statements.

It imposed responsibility on creditors to make sure that the charges that they placed on consumers' credit card statements were authorized and valid. The law outlawed the issuance of unsolicited credit cards. Now we just get unsolicited promotional materials, but we are not getting unsolicited credit cards in the mail.

And most importantly, it restored consumer confidence in a payment system that over the past three decades, I think you would agree, has more than lived up to its promise of convenience, universality, and efficiency for businesses and consumers alike.

More recently, the FTC has dealt with unauthorized debiting and billing in two other payment systems, the pay-per-call or 900-number industry which Susan Grant talked to you a bit about a moment ago and direct debiting of consumers' checking accounts.

In the early days and months following the deployment of these payment and collection systems, we at the FTC saw widespread abuses similar to those seen in the early years of the credit card billing system.

Unfortunately, and I think several of the Members of the Subcommittee have made this point, con artists and other unscrupulous operators always seem to seize upon promising new payment systems and technologies, exploiting both the convenience of the systems and the consumer's lack of familiarity with them.

In both the 900 number and check debiting system examples, the FTC brought swift, tough law enforcement actions to halt the fraud and to focus public attention on the problem.

The Commission staff urged legitimate businesses who were making use of the new systems to impose controls to prevent abuses, and when industry failed to act, the Congress stepped in outlawing the abuses while preserving the technologies, the systems and their benefits for the market.

In the pay-per-call or 900-number area, the FTC and FCC worked together to issue rules to govern the 900-number payment system, making it essentially safe for consumers to dial 900 numbers and giving them important rights to dispute billing errors.

And in the example of the check debiting payment system, the FTC through its Telemarketing Sales Rule imposed fraud controls on telephone-authorized checking account debits to make sure that consumers' accounts were not debited unless the party debiting could demonstrate that the consumer had given his or her express, verifiable authorization, and that the merchant who wanted to make the debit had proof of that.

Today, we face a new but familiar problem with unauthorized billing, this time on consumers' telephone bills. In 1992, when the Congress passed the Telephone Disclosure and Dispute Resolution Act, or the TDDRA as we call it, the 900-number dialing pattern was the only access route to telephone-based purchases by consumers.

Within a short time of the issuance of the FCC and FTC rules implementing that statute, however, both legitimate and unscrupulous businesses found new access routes to provide pay-per-call and other services and to bill consumers for them on their phone bills.

Initially, the problems that we faced surfaced in connection with the use of international dialing patterns. Within the past year, an even greater problem has emerged, and that is the use of the telephone number alone as a device for imposing charges on the consumer's telephone bill for an endless array of products and services, some of which you have heard about from Susan Grant this morning.

Once again, the Federal Trade Commission has brought tough law enforcement actions to stop some of the most egregious of these problems, and once again, the Commission is prepared to use its regulatory authority to prevent billing fraud of this type.

In the Telecommunications Act of 1996, which is best known as the big bill that really deregulated or opened the way for deregulation and competition in local phone markets, the Congress in one little line gave the Federal Trade Commission the authority to expand the coverage of its 900-number rule to cover similar services that are accessed through other dialing patterns where the Commission finds that there are unfair and deceptive practices occurring.

Using this authority from the 1996 Act and the authority to regulate telephone-billed purchases that was vested in our Commission under the TDDRA, the Federal Trade Commission initiated in the spring of 1997 a regulatory review proceeding to determine whether the existing pay-per-call rule, the 900-number rule, was working for everybody, businesses and consumers, and how it could be amended to fulfill the statutory mandates of the 1992 and 1996 acts.

The Commission staff has amassed a record based on submitted written comments, on oral presentations from all of the stakeholders that were obtained in workshops that we held on the issue, and information gleaned from these recent law enforcement actions.

We are currently completing the review of the record, and the Federal Trade Commission will then decide how the pay-per-call rule should be modified to appropriately remedy the problem of cramming and other abuses that are emerging in this brave new world of telecommunications.

In the meantime, the Commission will continue to use its enforcement authority vested in it under Section 5 of the FTC Act, to act to prohibit deceptive and unfair trade practices.

In fact, the Commission last week announced filing of two cramming cases against billing aggregators and their client vendors.

In one case—and on the first chart¹ that we have that Linda is kindly holding up—there is a chart demonstrating how this scheme worked. That case involves the *Federal Trade Commission v. International Telemedia Associates* and one of its client vendors, Online Communications, and in that case, the defendants allegedly used the latest electronic equipment to capture the telephone numbers of persons who called their 800 numbers in response to deceptive advertisements of the sort that Linda is holding up.²

When consumers called these 800 numbers, the phone number from which the call was placed was electronically captured and was used to call these consumers back on that number, and then later in the month, collect phone call charges appeared on the phone bills of the line subscriber whose number had been captured. The charges typically were \$75.

In that case, the court granted a temporary restraining order and has appointed a receiver to oversee the operations of Online Communications.

In the other case, and you have heard about this method, the defendants used a decidedly low-tech method, the sweepstake entry box. This was a photograph taken by some victims of this scheme at the home show that they visited where they thought they were entering a sweepstakes.³

Consumers who filled out the forms that were available there, which were applications for membership in an organization that purportedly provides a bundle of services and supporters veterans' concerns, the consumers unwittingly in filling out these forms agreed to recurring monthly charges for membership in the organization. Oftentimes, these forms were filled out by the line sub-

¹ See FTC statement, Appendix Chart F which appears in the Appendix on page 97.

² See FTC statement, Appendix Chart G which appears in the Appendix on page 98.

³ See FTC statement, Appendix Chart A which appears in the Appendix on page 92.

scriber's mothers or grandmothers who thought that they would help their kids out by entering them into a contest to win a car.¹

In this case, the Commission has asked the court to enter a preliminary injunction, and we are awaiting the hearing on our motion for preliminary injunction.

At the FTC, we are going to continue bringing these kinds of enforcement actions against crammers, and at the same time, we will be moving forward with a set of regulations to provide consumers with some protections in this area.

We commend our sister agency, the FCC, for the work that they are doing with the phone companies. We look forward to continuing our work with them, and we would be happy to answer any questions that you have this morning.

Senator COLLINS. Thank you, Ms. Harrington.

Mr. Neel.

TESTIMONY OF ROY M. NEEL,² PRESIDENT AND CHIEF EXECUTIVE OFFICER, U.S. TELEPHONE ASSOCIATION

Mr. NEEL. Thank you, Madam Chairman. I will be brief.

First of all, I think the FCC deserves a great deal of credit here. Mr. Strickling, and Chairman Kennard, and other Commissioners have moved very quickly to do something that is quite unusual, to bring industry leaders and industry groups together to try to figure out how to fix this problem without going into an onerous and time-consuming rulemaking process that could end up giving us more burdensome regulation on the vast majority of companies that are providing real services and who are good actors, but rather find some way to cooperate with an industry group to really get at the bad actors.

So that has been a remarkable process, and I hope that Larry's right and that this can be used as a model for dealing with future problems like this.

I think the Congress, this Subcommittee, you, and Senator Durbin, in particular, deserve a lot of credit in raising this issue to a more public level. If nothing else, those efforts could help dramatize this problem for a lot of consumers who are vulnerable to these kinds of quick-buck schemes, as Ms. Harrington pointed out, and get consumers more energized to look more closely at their bill. We are going to do that as we go forward, in terms of consumer education.

I would like to point out, too, that the local telephone industry has an intense strong interest in fixing this problem; in large part, because the bad actors are a minority. We have a business relationship with all of these companies who place charges on our bills, and the vast majority of them are legitimate. They provide a service to our customers who want these kinds of comprehensive billing processes for their own convenience, and we want to keep that process going.

Any money our companies may make off of these bad actors, by processing their bills, is more than offset by just the aggravation that is required in resolving these billing disputes and in lowering

¹ See FTC statement, Appendix Charts C and D which appear in the Appendix on pages 94 and 95.

² The prepared statement of Mr. Neel appears in the Appendix on page 100.

the consumer confidence in our companies. This is extremely important to us.

As you might imagine, whether it is a utility or any business that has an embedded base of customers, there is nothing more important to that business than the good will and trust of a consumer base like local telephone customers. So it is in our extreme self-interest to get this problem solved, and we are pleased to have been able to work very closely with Mr. Strickling, and the Chairman, and the result of the Commission to get this problem solved, to nip it in the bud.

It is also important to point out that these bad actors, in terms of using the local telephone bill, are a fairly recent phenomenon. It is only been within the last year that we have begun to see an alarming number of complaints or even the level of activity of placing these kinds of services on the phone bill. It is an attractive target. We are always going to have scam artists. They are always going to be with us. They have been with us through recorded time, and this is just one more avenue for abusing vulnerable consumers.

But this practice of loading these things on a local telephone company bill, through fraudulent procedures, is fairly new. So we are working very aggressively to try to fix them. It is important to note, too, that we did not simply wait for the Commission to convene a meeting or a process to get on top of this.

Mr. Strickling referred to a number of practices. Bell Atlantic is pursuing, essentially, a blocking mechanism. SBC, one of our larger companies, has already kicked 20 or more of these bad actors off the bill. U.S. West has a three strikes and you are out practice. We are working hard. We have been working hard to try to get these bad actors off the bill and to have a system, where consumers can have confidence.

There are always going to be problems because there are literally millions of transactions, and we are working to improve our own consumer education to be more user-friendly. You pointed out in your opening statement that sometimes a consumer is not getting the kind of response that he or she really needs when they call to complain to the local telephone company. We are working to fix that.

It is also important to expect the consumers to take a little more responsibility in poring over these bills, and do just what the one consumer did on that bill; write a damning phrase about this charge or whatever and simply not pay it. They should not pay it. They should tell us about it. They can call the number to the company that supposedly has provided the services.

If they notify the local companies, we will take it from there. These new guidelines that Mr. Strickling has pointed out will be a kind of a watch word, a benchmark for this industry to rally around a set of principles that we can put into our networks to make sure that consumers have those tools, and they are voluntary. But it has got to be noted that it is in our interests to incorporate as many of those as possible to make sure our customers feel good about their telephone bill.

So some of them might work in Bangor, and they may not work in Los Angeles, but the important thing is to make sure that something works, so your constituents and those in Chicago or Mis-

Mississippi or wherever at least have some confidence that this problem will be fixed. So the companies need some flexibility, and the release in the announcement of these guidelines will go a long way toward helping companies rally around a set of principles that they can put into their networks, and it could be a variety of things. It could be some additional things down the line.

One important reason why we do not need a new Federal law or a formal rulemaking is that, in doing so, you take a snapshot, you sort of freeze in time a solution to a problem that exists today. This is such a dynamic situation, and unlimited creativity in the way these guys can abuse consumers, that a year from now, 2 years from now, these may not be the best ways to go after them. So it is important not to freeze them in place right now.

You have got the opportunity, in fact, you will exercise rigorous oversight. So will the Commission, so will the FCC, which has legal authority to go after these fraudulent business practices, and I would invite you, encourage you, and welcome that aggressive oversight, and we will be responsive to that as you see problems down the line.

It is also important to note that no one in this country should lose their local telephone service because of a billing dispute with a crammer, no one. If it ever happens, you should let one of the companies know or bring it personally to my attention, and we will make sure it gets fixed. No one should lose local service.

I would give the State Commissions a great deal of credit that they prohibit this sort of thing. The State Commissions are right there on the firing line to ensure that local customers are not abused in this process for telecommunication services. Many of them have in place rules that prohibit a local phone customer from being cut off as a result of a billing dispute. We are not going to let that happen, and the State Commissions are not going to let that happen.

These guidelines go a long way to helping educate our companies. We are going to take the lead at USTA to make sure that every company, not just the big, large companies that you hear about a lot, but every small phone company, mom and pop companies, co-ops and others are made well aware of these practices. We will work with them to put them in touch with the Commission or other companies to exchange information about how to do this best.

Verifications are critical, bill adjustment practices, having contracts with teeth, making sure that the bills are easier to read and understand. It is a very important thing, so it does not look like gobbledy-goop. Blocking options could be enormously helpful and consumer education. These are all options. We are going to incorporate them, and we are going to use the most effective tools, the most effective business practice in each of our markets, the one that works the best, the one that has the most teeth to get these bad actors out of the system, so there is increasing consumer confidence.

Every time we have these kind of complaints, every time it splashes on the front page of *USA Today* or is on the network news, it does not help us. In fact, it hurts our companies. We want to clear this up, so there is not this degree of fear or lack of confidence.

So between the FTC and their legal authority, the FCC's oversight, and your aggressive oversight, Madam Chairman, I think we can solve this problem. We are always going to have new forms of this problem, and we have to go back and fix them as they come along. But we welcome your interest, your aggressive pursuit of solutions here, and we want to work with you and everyone involved to fix this problem.

Thank you.

Senator COLLINS. Thank you, Mr. Neel.

I do want to commend the telecommunications industry and the two agencies before us in working together to bring forward these voluntary guidelines.¹ But I do have a number of concerns about their voluntary nature. One Attorney General of one State mentioned that he felt it was a Chinese menu approach to this problem; that you can pick one from Column A and one from Column B, and that it would lead to inconsistent enforcement and inconsistent protection for consumers across the United States. They are a good first step.

I recognize that it is a far quicker, and I believe our hearings helped prompt the speedy resolution of this issue or the speedy action on this issue. It is much easier to do industry guidelines. It is much quicker than going through the formal rulemaking process, but I am concerned about what the impact is going to be on those bad actors who do not adopt the regulations or whether the piecemeal adoption of regulations by local telephone exchanges will, in fact, let the scam artists proliferate and continue to operate.

I want to start with Mr. Strickling and Ms. Harrington in this area. It's my understanding that neither the FTC, nor the FCC, now has specific regulations that prohibit the billing of unauthorized charges. You have related regulations dealing with the pay-per-call area, but there are no regulations in either agencies that specifically prohibit the unauthorized billing of charges; is that correct, Ms. Harrington?

Ms. HARRINGTON. Yes, that is correct.

Senator COLLINS. Is that correct, Mr. Strickling?

Mr. STRICKLING. That is true, but we do have the authority to go after any misleading practices of common carriers, so we would have the legal authority to pursue that, and we are pursuing some people in some current investigations.

Could I comment on the question of standardization?

Senator COLLINS. Yes, please do.

Mr. STRICKLING. Because I would like to give you my perspective that over the last 2 months it has become very apparent to us at the FCC that the local exchange carriers, who are generally not the perpetrators of the fraud here, it is other people, but they have decided that consumer protection is now good business.

And we have seen, I think, in the last 2 months, a certain level of competition developing among the companies to see who can be the first to adopt various practices. And I think Bell Atlantic, yesterday, wanted to be the first to adopt a bill blocking. We have had others who have selected various pieces of this to latch onto and move forward.

¹ See Exhibit No. 4 which appears in the Appendix on page 124.

I would like to give the industry an opportunity to let this competition run its course a little bit longer before we try to lock in on any kind of standards because I think, as Roy suggested, this is an area where what we are dealing with today may not be the problem in 6 months or a year. It is a new area. We are trying to understand it.

The response of the local exchange carriers I think has been tremendously rapid and thorough, and I think we ought to give them the opportunity to really work at this. Let us monitor the complaint levels. We will continue to work with the FTC to go after the bad actors directly. But right now we are seeing a lot of good ideas coming out of these companies.

Frankly, these guidelines are better than what we could have written as an Agency in a rulemaking because of this competition and spirit of cooperation among the companies. I think they understand that we have deregulated billing, but that with freedom comes some responsibility, and they have taken it on, and they have gone after it, and I would not like to see that stopped by an attempt to do some premature standardization.

Consumers will be protected under these programs. I am confident of that.

Senator COLLINS. Does not the lack of a specific regulatory framework, however, inhibit your enforcement actions? I am thinking, for example, of slamming, and how difficult it was to fit slamming into existing laws, and when you had egregious cases, such as the Fletcher case, that we are all familiar with, where criminal penalties really should have applied, but there were not criminal penalties.

Do you really feel that you have the regulatory tools if you don't have regulations that at least specifically address the billing of unauthorized charges, Ms. Harrington?

Ms. HARRINGTON. Senator, I think that that is a good point. The Federal Trade Commission is working on expanding its 900-number rule to include some key principles in regulation of billing practices.

I think that Mr. Neal and Mr. Strickling both make a very good point that all of these technologies, whether we are talking about telephone-based purchases or a few months ago we had the pleasure of appearing before your Committee about Internet issues. We know that all of the technologies are changing every day, but I think that the FTC's view is that there are some enduring principles that apply under Section 5 of the FTC Act, broadly. You cannot lie. You have to disclose to consumers all of the material terms and conditions of a transaction.

You cannot engage in practices that unfairly cause unavoidable economic injury to consumers, and our challenge is to incorporate those enduring principles into an appropriate regulatory framework to address these new systems; payment systems, collection systems, marketing technologies as they arise.

What we want to do is incorporate the principles in the rules in a way that is stated as broadly as possible, so that we cover these new approaches as they develop and use the elasticity of our statute to allow these technologies and marketing systems to grow and

to change, while imposing a set of consistent and enduring principles on the payment system.

So in the FTC on-going rulemaking in the pay-per-call area, we are looking to extend the kinds of billing dispute procedures and protections for consumers that apply in the 900-number area to all telephone-based purchase transactions, where the charges appear on phone bills, and we certainly will be incorporating anti-fraud provisions, as we have done in the telemarketing sales area, so that we are not being too proscriptive and too detailed, but so that we are making it clear that, for example, there is a requirement for customer authorization before a charge appears on a phone bill.

I think that it will help to have that fixed in the law, but I also think that what Mr. Strickling pointed out about this FCC initiative is true, and that is that we have made a giant leap forward through the voluntary efforts of the LECs in at least improving the status quo considerably until the time that we can get some good regulation in place.

Senator COLLINS. Mr. Strickling, would you want to comment on that issue?

Mr. STRICKLING. I basically agree with the comments of Ms. Harrington, and we are looking, as I indicated before, in our truth-in-billing notice, whether there are some of these basic principles that ought to be incorporated in regulation now.

I am, though, a little concerned about trying to standardize, before we have really gotten a better sense from the companies of all of the technologies and tools that might be out there to solve this problem, as I indicated earlier.

Senator COLLINS. Mr. Neel, you mentioned in your testimony, and you went on at a little greater length in your written testimony that the consumer must exert some responsibility in this issue, and you go on to say consumers must carefully read their bills, identify any questionable charges, and bring them to the prompt attention of his or her service provider.

My concern is, as we have seen this morning, that even the most astute and careful consumer is not equipped to deal with such fraudulent companies, and I would like to show you a specific example. I would like Exhibit No. 2e. to be brought up.¹

Consumers certainly have an obligation to look at their bills, but there is a limit to what you can expect consumers to be able to catch. This is an enlargement of a telephone bill that was received by a consumer who was crammed. As you can see from the exhibit, the consumer was billed by Hold Billing Services for two vaguely identified charges; one is activation, \$4.95. The other is monthly fee, \$4.95.

Now you are an expert in this area, if you looked at that, could you tell that those were cramming charges rather than legitimate charges?

Mr. NEEL. No, not at all.

Senator COLLINS. I think that is my point, it is very difficult to detect cramming in many cases because of the deceptive techniques that are used by some of the bad actors in the industry. That is why I am a bit concerned.

¹ See Exhibit No. 2e. which appears in the Appendix on page 116.

I know what you are saying when you are advising consumers that they must take more responsibility. But on the other hand, even a very careful consumer is not going to be able to spot this kind of fraud. That is one reason why I think that the local telephone company needs to take on more obligation here.

I realize your guidelines are going in that direction. But why should it not be a requirement that if a consumer challenges a charge and says, "I did not authorize this charge. It is completely fraudulent," why should that not be treated by a telephone company the same way that a credit card company would treat it? Why should there not be a requirement that the telephone company immediately give a credit on the bill or at least hold the charge in abeyance until the issue can be investigated and resolved?

I know Bell Atlantic has adopted that policy, but other carriers have not, to my knowledge. Why should that not be done across the board?

Mr. NEEL. Well, I think a lot of carriers have done some version of that by simply, one, not requiring that charge be paid. Some have referred that back through these aggregators. I think that as we get into this process, each company is going to figure out a way to make it the most consumer friendly.

You are exactly right. If there is a fraudulent charge, it should ultimately be the responsibility of the so-called service provider to deal with that, and what we need is the most efficient system of getting that back to the loop and saying to that service provider, the customer is complaining, we are not going to bill that charge, you have got to deal with this directly with the customer.

So we want to make it as friendly as possible and as easy to do. There is no question that it is confusing. But there are a number of options that are available to the consumer. If there is a charge that is suspicious, it just does not look like anything they have ever seen or that they have ever ordered, they can simply do what one of the consumers did earlier in this hearing in one of the charts, is simply write on it, "I did not get this. What in the world is this?" They probably used a word other than that word, but what is this? And then that will work its way back through.

Surely, all 1,000-plus local phone companies have not figured out the perfect way to do this yet. But these guidelines will go a long way toward helping all of those companies do just that.

In terms of making it a requirement, that may work with a company like Bell Atlantic or many other companies, that is the best way to do it. A better way may be some verification scheme. So there could be any number of options to make this easy for the consumer. Give us a chance to make this work, these voluntary guidelines, come back and look at this in a year or so, or whenever.

If these complaints continue unabated after these guidelines are put into place, then we have got another issue to deal with. All I am calling for is to not give this a force of law to freeze any one particular solution that would apply to every case like this.

Senator COLLINS. I am going to ask one additional question before I yield to Senator Durbin, and then I have a few more questions. The States generally have been more active in bringing enforcement actions against crammers than has the Federal Govern-

ment thus far, and I am wondering if the reason for that is the joint jurisdiction.

As I understand it, and correct me if I am wrong, Mr. Strickling, the FCC has jurisdiction over any telecommunications carrier or the local telephone company and, Ms. Harrington, the FTC has jurisdiction over the billing company. Is that generally correct, that there is a difference in your jurisdiction, even though you may have some of the same players involved?

Mr. STRICKLING. Yes. I would suggest that the problem is not the overlap in the jurisdiction, it is the potential gaps in jurisdiction.

Senator COLLINS. That was going to be my next point. Would it not be better to vest jurisdiction in one agency, so that you do not have the problem—well, you would avoid two problems; one is the gaps in enforcement. But the second is the problem of who is on first, and the problem for the consumer of whom do I go to, who is going to take action. Divided jurisdiction concerns me because I worry that neither agency will act aggressively if it is some other agency's personal responsibility.

Mr. Strickling.

Mr. STRICKLING. Right. I am not concerned about the overlap in jurisdiction. I think it would be a mistake to divide jurisdiction. In addition to the FTC and the FCC, we have a number of other players not at the table today who have a role in law enforcement in this regard. We have the State Attorneys General, we have the State Public Utility Commissions and, frankly, when you are dealing with an issue of consumer protection, are not more options for consumers better? So that, if they call the FTC—I think the worst thing we can do to consumers is to have them call the agency that makes sense for them to call, only to be told, "Oh, we are not the right people. You have got to call somebody else."

So what we have proposed in our legislative recommendations to the Committee is that we should make sure that there are no gaps in jurisdiction, but that either the FCC or the FTC could pursue the bad actors, where appropriate. There is no question the FTC has special expertise in marketing practices, and consumer fraud. We have special expertise in the telephone network and how it works, and I think it should be incumbent upon the Committee and Congress to find ways to merge our respective expertise so that no bad actor escapes the system.

Senator COLLINS. I am concerned about the frustrating situation where I, as a consumer, see a fraudulent charge on my phone bill. I call my local telephone company, the telephone company is not Bell Atlantic, so I do not get a credit. I am told, "Well, gee, this is not our problem. You need to call the billing company." I call the billing company, and they say, "Well, we were just carrying out the order of the original company." So I call that company, and they hang up on me. They will not even deal with me.

So then I am very frustrated. I have gone through all of these steps. Nobody has helped me. I call the FCC, and the FCC says, "Sorry, this is not really the local telephone company here. This is a billing consolidator who did this to you. Call the FTC."

At that point, I would give up and pay the—particularly if it is a small fee. I would give up and pay it.

Mr. STRICKLING. That is why we have asked the Congress to extend our jurisdiction, so that when they call us, we have the ability, if it went on the telephone bill, to go after the clearinghouse, the service provider, and the local telephone company, if appropriate. That is the gap in our jurisdiction right now.

The gap in Eileen's jurisdiction is that if they call her and the company involved in the fraud purports to be a common carrier, then they do not have jurisdiction. We are recommending eliminating that gap, so that when the consumer calls either of us, both agencies, either agency is prepared to take action to help that consumer. That is what neither of us is fully able to do today, depending on these jurisdictional definitions.

Senator COLLINS. Ms. Harrington, do you want to add anything to that?

Ms. HARRINGTON. Yes. I think the FTC would never cede jurisdiction, even if the company calls itself a common carrier, although some courts have—because of the way that our statute is written—have challenged the notion of FTC jurisdiction for deceptive practices by ostensibly common carriers. But we would not concede that we lack jurisdiction. I think that Mr. Strickling's suggestion, though, that that be clarified in the statute is a very helpful suggestion.

In terms of the consumer situation that you describe, I think you are absolutely right. Consumers do not know who to call. They do not know where to call. They do not know quite what this is, and we have worked very closely with our colleagues in the States, the Attorneys General, the Utilities Commissioners, and the FCC to make sure that whoever a consumer contacts gives them the full measure of information about what they need to do. I think it is absolutely unacceptable for a consumer to call any public office and hear, "That is not our problem. That is not our jurisdiction."

At the FTC, we run a Consumer Response Center, and I can guarantee you that nobody who calls the FTC's Consumer Response Center with questions about a common carrier hears that we do not do common carriers here. We tell people what they need to know, help them out, and send them on their way, and I think that there is a great willingness on everyone's part to just that. Certainly, at the FCC Call Center in Gettysburg it would be the same story.

We are working very closely, as I mentioned, with the State Attorneys General. We participate in their multi-State work group and often convene it to discuss these cramming problems, and we are particularly impressed with the work that the Illinois Attorney General's Office and Assistant Attorney General Debbie Hagan in Illinois have done to bring actions against these crammers.

We have taken the same approach here as we have done in the telemarketing fraud and other areas, where we have what we call a target-rich environment. There are plenty of problems to go around here, and so what we do is make sure that everybody who has a role to play in protecting consumers is operating off of the same page.

The FTC operates something called Consumer Sentinel. It is an online data base made available to hundreds of law enforcement officials all over the continent, not just in the United States, but

Canada, too. So that just with a point-and-click on the World Wide Web, law enforcers can check very quickly to see what kinds of complaints they have from folks in their States or in their jurisdictions about this or any other fraud-related problem.

They can identify the victims, identify the bad actors, find out whether other law enforcement agencies are conducting investigations or have brought suits. Find out whether there are other pieces of evidence available in a law-enforcement network. A lot of these cramming cases that the States have brought have been brought as a result of their ability to get this access to the data in one shared place.

We think that working together is the key, regardless of how the statutes are written or the rules are written or who has got leading jurisdiction or follow-on jurisdiction. The key here is for everyone who has the authority to protect consumers to use it and to use it aggressively.

Mr. STRICKLING. Senator, I do not mean to belabor the point, but I would like to just add one footnote to this, which is that there is something of a difference in what we do with the complaints we get as compared to what the FTC does, which I think also argues for continuing the shared jurisdiction and eliminating the gaps.

Every consumer complaint we receive in Washington, we send out to the carriers involved to seek some sort of redress for that individual consumer, usually in the form of some credit on their bill.

To my knowledge, we're the only Federal agency that does that kind of consumer protection, taking individual complaints and sending them out to the carriers that are involved, and seeking redress for the individual consumer.

Now, we also, much like the FTC, the FTC generally will assemble a series of complaints and launch a Federal court action seeking sizable fines and injunctions, and that has absolutely got to be part of the process as well. But if you evaluate what each agency is doing, we are approaching the consumer protection in slightly different ways, and I do not think you want to lose that. I think you want to have both approaches in place.

Senator COLLINS. Thank you. Senator Durbin.

Senator DURBIN. Thank you, Madam Chairman.

May I ask a few preliminary questions here? Because there are things that are unanswered in my own mind. How profitable is scamming? Do you have any examples?

Ms. HARRINGTON. Scamming, generally, or cramming or?

Senator DURBIN. Let us zero in on the cramming part of it. How profitable is it? Have you been able to identify one company and how much money they have made with cramming practices?

Ms. HARRINGTON. Let us talk for a minute about Hold Billing. You have seen some bills that they have issued, and that is one of the companies, one of the aggregators, that we sued.

We estimate, and we are in the process, of course, of litigating that case, but we estimate, I believe, that they may have taken in this, in this VOAA scheme, what, about over \$5 million or \$2.2 million in the VAA Hold Billing scheme.

Senator DURBIN. Over what period of time?

Ms. HARRINGTON. Oh, less than a year. The other case that we brought, I think that we estimate now, and we have a better estimate there because the Court appointed, at our request, a temporary receiver to take over On-Line Communications, and on that one—is that the one that is \$5? That is in excess of \$5 million just this year, this calendar year, and that is just for one client.

These billing aggregators that are named in the two actions that we recently filed, work for lots of clients. I would note that some of the clients that they do collection for are common carriers, purportedly, who have filed tariffs and are selling and billing on a monthly basis for a telephone calling card, not a stored value card, but something like a telephone credit card, and that is where this statutory issue becomes relevant, the jurisdictional issue.

Senator DURBIN. I want to ask a few more preliminary questions. In most of the cases we have seen here, the bills have charges in the range of \$3, \$5, or \$8. Someone mentioned a \$75 charge here earlier.

Ms. HARRINGTON. Yes.

Senator DURBIN. Can you tell me is it more common for these crammers to be bringing in a lot of customers at a low charge that may escape the attention of that customer or do we have some that really range at a much higher level?

Ms. HARRINGTON. We have some that range in a much higher level. There are a lot of different things happening here. Let me just point to a very fundamental problem, and that is the capture of a phone number and its use to generate billing information.

We saw the low-tech example where the contest box was used, but in the case that I mentioned where the charges typically were \$75 per transaction, the charge was generated by ANI capture, Automated Number Identification, which is similar to the technology or the same technology, I guess, that makes caller ID possible.

So simply by placing a telephone call to an 800 number that was purportedly not only free, 800 numbers are call, but the service, underlying service, was purportedly free. Just by placing the call, the bad guy was able to snare enough information to cause a charge to be generated, and in that instance, it was purportedly for a collect call from Deerfield Beach, Florida, to the phone line of the line subscriber, and typically those charges ran—it was \$3.99 a minute, but the way that they did it was to keep people on the phone for a while, and the typical charge was \$75, and many consumers had multiple \$75 charges.

Senator DURBIN. One last preliminary question. We talk about this in terms of unsuspected residential consumers. Have businesses also been stung by these crammers?

Ms. HARRINGTON. Oh, yes. Businesses, school districts. In one of our cases, the line that was billed was in a school that was locked up. The purported collect call was placed in the middle of the night on a Saturday night, and the security forces for the school testified that no one could possibly have been there.

We have law firms—and I suppose there is not a great deal of sympathy for law firm victims— [Laughter.]

Ms. HARRINGTON. But a law firm up in New York tells us that a bunch of phone numbers that they had reserved for their firm's

use, but had not even put into use yet, there were no phones, nothing was ringing, those lines got billed, got crammed.

We have somebody else—in fact, lots of other somebody elses—who say that their dedicated fax lines were billed, were crammed.

Senator DURBIN. Let me go to the next question. How many local exchange carriers are there?

Mr. NEEL. There are about 1,200 local phone companies. About 15 of them are what you would consider large companies, and the rest are fairly small.

Senator DURBIN. And how many end-user customers are there?

Mr. NEEL. About 100 million.

Senator DURBIN. Let me ask you, Mr. Strickling, I have the same concerns that the Chairman does about these voluntary guidelines. First, I think they are a good first step. You misspoke at one point and said, you referred to sweepstakes, and you said they are, "Illegal under our guidelines."

Mr. STRICKLING. Senator, I was referring to our slamming rules. It is illegal under the slamming rules to use that as a technique to slam somebody's long distance carrier.

Senator DURBIN. But something can't be illegal under guidelines, could it?

Mr. STRICKLING. I agree.

Senator DURBIN. And in this situation here, we are talking about best practices guidelines that were promulgated by the industry, with the FCC, by bringing together some of the major players and talking about the problem. Now that was May 20, was it not? Is that when they were issued, the guidelines were issued?

Mr. STRICKLING. The guidelines were released yesterday. The work effort started on May 20.

Senator DURBIN. So would you say that most local exchange carriers were at least aware of this discussion before yesterday? They knew that these guidelines were being discussed, even if they weren't at the table?

Mr. STRICKLING. The U.S. Telephone Association, Roy's association, was a participant in the process, and I think they kept their members informed, yes.

Senator DURBIN. There is some wording in here, very careful wording. I can see there are some lawyers at the table. There is some very careful wording that says, "Although the guidelines were jointly developed by the participants, the decision of whether and to what extent to implement any or all of these guidelines is an individual company decision to be made by each LEC unilaterally."

So we have over a 1,000—according to Mr. Neel, 1,200—Local Exchange Carriers out there. What do you consider to be a reasonable compliance of the industry now to these guidelines?

How many would you think should sign up for these guidelines, for us to say this is a successful effort?

Mr. STRICKLING. We had, at the table, all of the largest companies, the RBOCs, GTE, Sprint, Southern New England, Cincinnati Bell. I think, when you add up the access lines, that they account for over 90 percent of the access lines in this country. Every one of those companies is committed to adopting the portions of the guidelines that make sense for them. I would view that as substantial compliance.

Senator DURBIN. Well, let me tell you, as a lawyer, you have just given some weasel words in there that worry me. They have agreed to adopt those portions that make sense to them. Going back to the Chairman's point, it appears that we will not have any uniform national standard for this 90 percent of service. We may have some, as she says, the Chinese menu approach, that picks some parts and leave other parts out.

Some of the guidelines, and, though, they are all advisory, really get down to the bottom line here. Is the local exchange carrier going to check out the marketing programs? Is the local exchange carrier going to screen the products that are being offered? Is the local exchange carrier going to go into approval process for the service providers?

If they decide they like some of those and do not like others, we are going to have a patchwork quilt here that may or may not work. Now, there is something to be said for experimentation and determine what the best outcome is, but I think what troubles me is the suggestion in your opening testimony that you went the guideline route because the FCC did not want to get bogged down with this promulgation of regulations. Is that not what you do for a living?

Mr. STRICKLING. Yes, sir, and it takes us about a year to do that.

Senator DURBIN. And so is the problem the regulation process here that you cannot develop regulations in a timely manner to respond to these crises?

Mr. STRICKLING. I think, yes, sir. The Administrative Procedures Act and the involvement of all parties to the process who understand how to delay and obfuscate proceedings makes it very difficult to issue regulations as timely as consumers needed the protections here.

Senator DURBIN. Well, far be it for me in my business to suggest we pass laws on a timely basis, but let me say that it troubles me to have a regulatory agency come in and say, "You know, we cannot regulate, so here we have got a better idea. We are going to try some guidelines that some of these companies may sign up, if they want to, and then we are going to kind of watch it and see how it works out."

I am worried, from the position of the consumer, while we are going through this great experiment, this Chinese menu experiment on guidelines with some companies adopting some parts and not adopting others, what is the consumer's recourse?

I read these guidelines, and I am not sure, from a consumer's recourse, where I am to turn. I am going to lodge my complaint. Let us assume I have been stung for \$10 or \$20. I may get my bill resolved. But let us assume something worse. Let us assume that they had been after me for 2 years before I discovered it. Let us assume that my liability is now \$200, \$500, or \$1,000, and I now have just discovered that I have been scammed here. I do not have much of a recourse, do I?

Mr. STRICKLING. I, respectfully, disagree, Senator.

Senator DURBIN. Tell me what I do.

Mr. STRICKLING. The service provider who is committing the fraud is breaking the law. If it is a common carrier, our Communications Act allows us to proceed against them, whether or not we

have these guidelines. We are investigating companies who fit that very description, including some of the ones we have talked about today. We are prepared and will be bringing sizable forfeiture cases against those companies.

At the same time, Ms. Harrington described to you the action her agency is bringing against the service providers. The guidelines deal with the billing agent, the local telephone company.

What is key here, Senator, is we want the number of complaints to go down over time. We want the money not to get to the cram-mers. I absolutely believe there are a variety of approaches that can achieve that goal, and that is our goal, to stop the complaints from coming in because the practices have ceased, and to keep the money from getting to these people. That, I think, is what we will be looking to see in terms of these guidelines. But, in no way, will we back away from our obligation to enforce the law against the fraudulent parties.

Senator DURBIN. Who is liable?

Mr. STRICKLING. The liability would be on the part of the, in our case, we can proceed against any common carrier who was engaging in the cramming behavior as a violation of the Telecommunications Act, and we will do so.

Senator DURBIN. So that would be the local exchange carrier?

Mr. STRICKLING. If there's a situation where they are cramming, yes, they could be a defendant in such a matter.

Senator DURBIN. A clearinghouse?

Mr. STRICKLING. Today, we do not have jurisdiction over the clearinghouses.

Senator DURBIN. Service provider?

Mr. STRICKLING. If they are a common carrier, yes.

Senator DURBIN. So if I am out \$1,000 over the last 2 years, and I just discovered it, what is the procedure? How long do you think it is going to take before I get my day in court?

Mr. STRICKLING. With us, if you had written us a complaint, it would have been sent to the carrier, again, assuming a common carrier was involved, and you would have your day in court very promptly, in terms of the informal complaint process that we administer.

Senator DURBIN. Give me some kind of time frame. What would I expect if I finally found the FCC and discovered I had been ripped off for a thousand dollars?

Mr. STRICKLING. We are shooting to be able to do that in 60 to 90 days.

Senator DURBIN. So the hearing would take place where?

Mr. STRICKLING. It is not a hearing, sir. What happens is you would send a written complaint in. We get tens of thousands of these complaints each year. There is no way, with our resources, that we could hold a hearing on each one. The process is to send each complaint to the carriers that are involved in the alleged fraud and seek response and redress for the consumer for that.

Then the respectable people in this industry will generally provide credits upon the receipt of that letter if they have not already done so, and many have provided credits even before we send those complaints out to them.

The recalcitrant ones we would bring enforcement actions against and seek fines against.

Senator DURBIN. I want to make sure the record is clear for those who are watching and wondering. If I am out \$1,000 and contact the FCC and, clearly, I have been ripped off by a crammer, I can expect to get some resolution of my complaint in 90 days.

Mr. STRICKLING. That is our goal, sir. I have to tell you we are not there yet, but we are improving our processes.

Senator DURBIN. Where are you, if you are not there yet?

Mr. STRICKLING. I cannot say, sir. But we are trying to get it to 60 to 90 days.

Senator DURBIN. Mr. Neel, did you want to say something? I am sorry.

Mr. NEEL. I would just point out that if you have not paid the bill yet, you should not pay it. You are not going to lose your local phone service.

Senator DURBIN. I understand that. But I am talking about people who have discovered this has been happening for a long time.

Mr. NEEL. If you have already paid it, and it is after the fact, it is going to be a little more difficult to get your money back, just as it would if you paid a credit card bill, and you discovered it several months later. So those situations are always going to be with us.

Senator DURBIN. I think the point I was trying to drive at, as long as we are dealing with voluntary guidelines, and possibilities, and probabilities, and some companies will and some companies will not, in the meantime, while we are working out a good approach to this, with this experimental method, I am just wondering what the recourse for the consumer is while we are in this never-never land of not regulating and not putting this into laws.

Mr. NEEL. If we are talking about the period in which these voluntary guidelines have been put out there, one, as Larry was pointing out, 90-95 percent of every consumer in the country would be served by a company that was a party to the actual development of these, and our association representing the rest of them.

There will be no company that will not put in place some guideline that works to protect consumers. Every local telephone company will do that, and will do it very shortly.

Senator DURBIN. Ms. Harrington, may I ask you about the question of on-site inspections? It has been suggested here that at some point someone would have the responsibility to determine whether the service provider was anything more than a mailbox or a drop box or some phony address providing a service that never existed. Is there any requirement for on-site inspection under the current law?

Ms. HARRINGTON. No, there is not. There actually is not, under the credit card payment system either. But if I could just take a moment to explain what the parties in that system have done to try to keep fraudulent actors from coming into the system, it might be helpful.

In the telemarketing area, from about 1989 until 1990, we saw tremendous problems with fraudulent telemarketers making use of the credit card billing and collections system. The banks that control those systems were very slow to realize their role in preventing

the access to the, in making easy, really, the access to that payment system by the bad guys, but, ultimately, they realized that they had, not only a very significant role to play in preventing telemarketing fraud, but they were losing a whole lot of money by letting these fraudulent actors use the payment system.

In the Association's—Visa and Master Card—in their rules, which are incorporated in the contracts that they have with all of their licensee banks, they require that merchant banks, the banks that make it possible for businesses to accept credit cards in payment by letting the businesses deposit those transactions into the bank and then the bank puts it through the system for them, the merchant banks now go out and do on-site inspection for all of certain kinds of businesses, including businesses that engage in distance selling, like telemarketing.

And so, in order to get a merchant account with a bank that is licensed by Visa or Mastercard, the merchant, if they do telemarketing, has to demonstrate that they are there, that they are a real business, that they have a real product, that they have real mechanisms for fulfillment and so on and so forth.

Senator DURBIN. But that does not exist in this situation?

Ms. HARRINGTON. It does not, and it does not exist in the credit card situation by law. It exists by contract.

Senator DURBIN. I notice, also, that in the guidelines here there is no boundary to these service providers. They basically say, "We are in business, and here is who we are, and where we do business. We are legal under the laws of this State. But, frankly, there is no evidence of any kind of capitalization on their part or any kind of recourse."

Ms. HARRINGTON. And that is required in the credit card payment situation as well. And, in addition, there are reserving requirements that a lot of merchants have to meet. So that when charge-backs come in, 30 or 60 or 90 days out, there is some money there to pay back consumers and send the money through the system.

I think that if we have one criticism of the telephone industry as it has opened its billing process to others, it would be that there just are not the kinds of fraud controls and risk assessment mechanisms in place that an industry that is running a payment system ought to put in place.

Now we see a lot in the guidelines, which I really have not had a chance to study in their current version in detail because they were just released. We see, though, that there are some steps being taken to putting those kinds of fraud controls in place.

Senator DURBIN. I have taken too much time, and I have to end here, and I will turn it back over to the Chairman, and I thank her for this, but I share that concern. I really think the bottom line here, as good as voluntary guidelines can be, unless you have compliance from a major portion of the carriers who are involved in this billing, that we may find ourselves, months from now or years from now, saying this just did not do it, and then, Mr. Strickling, we would start talking about, well, maybe there ought to be rule-making that will take a year.

It just strikes me that I want to work with the industry, but I would think it is in the industry's best interests to have these

guidelines established as a standard, and to set a goal as to what the compliance will be, and to make sure that it works. In the meantime, I think we are going to continue this Chinese-menu-approach, and I am not sure that is best for the consumers.

Mr. STRICKLING. Senator, if I could briefly respond. We are not going to wait a year. We are going to be monitoring these guidelines from now on. I will also tell you that if we decide a rule-making is required, the fact that this work has been done as quickly as it has been done will allow us to conduct a rulemaking much faster than the normal processes would allow us to do.

So I do not think we have lost any time here. I think what we have done is found a way to get some immediate consumer protection put in place here. We will evaluate it, and we will put the rules in place if these do not work.

Senator DURBIN. Let me just say I hope you have established some consumer protection, but you have no way of knowing. Some of these companies are coming forward, and we are glad to see it. You say it is in the name of competition, and that is all well and good. But it is far short of what happened in the credit card industry, where we established a legal standard across the Nation, so that everyone knew what the rules were.

Senator COLLINS. Thank you. Mr. Strickling, how many enforcement actions related to cramming has the FCC taken?

Mr. STRICKLING. We have brought none so far, but we have several companies under active investigation who are engaged in both slamming and cramming.

Senator COLLINS. Your answer that there have been no enforcement actions taken to date is part of the basis of Senator Durbin's and my concerns. In addition, when we looked at the slamming situation, again, it was very slow before the FCC took action. So I just want to raise that as a red flag. I just have one final question for all three of you to follow-up on the concerns that Senator Durbin and I have expressed.

What measurement, specifically, are you going to use to assess the success or effectiveness of these voluntary guidelines and how long are you going to give the industry to clean up its act? We have seen this enormous surge in cramming complaints in just the past 6 months. You have the statistics—6,000 in one case, 15,000 in another. What specific measurements are you going to use to declare either the success or the failure of these voluntary guidelines?

Mr. Neel, I am going to start with you.

Mr. NEEL. Well, we would consider the efforts a success if complaints dropped to nominal, at best, and our intention is to make sure that all of our companies are well aware of these guidelines, will serve as a clearinghouse to put them together with other companies if they want to know how to do it.

We do not have, obviously, enforcement authority of any kind, but we will make darn sure, and we will be prepared to report to the Subcommittee the degree to which our companies are adopting any kind of guideline to protect consumers.

Senator COLLINS. Can you put a number on it for me? I mean, if the FCC is still getting 5,000 consumer complaints in the next 6 months, would you say that we need to go the mandatory regulatory route?

Mr. NEEL. Well, I think it will take a while, we hope a short while, for this to take effect. It cannot be overnight, obviously because consumer education is a critical part of this. So we empower consumers to challenge these.

Senator COLLINS. You know, that really troubles me to hear you go back to saying it is the consumer's responsibility because we can show you example, after example where there is no way the consumer could tell that the charges were fraudulent. They are deliberately placed on the bill with very deceptive-sounding names. This is not the consumer's fault.

Mr. NEEL. No, but the point I am making is to educate the consumer as to what their rights are, not to educate them to take it in their own hands, resolve the problem by themselves. But one piece of it, and we will take the responsibility for that, is making sure that they are able to contest this and an effective means to avoid these outrageous \$75 charges or even \$2 charges. It is in our interests to do that.

I would reassert that the local telephone companies are not the perpetrators of this. It is in our interest to fix this problem, and every time we have an unhappy customer from slamming, cramming, or whatever that shows up on our bill, it threatens our relationship with that customer for our core business local telephone service.

So I can guarantee you that we will work as aggressively as we can to reduce these complaints to zero. Obviously, we will never have zero because there are clever con artists out there. But I cannot define a number of success. That is best left to you and to both Commissions. But all I can do is make a commitment that our companies will implement these guidelines, so it will get at this problem.

Senator COLLINS. Mr. Strickling, what specific measures are you going to use to evaluate the success of the guidelines?

Mr. STRICKLING. I think, first and foremost, as Roy indicated, we have to look at the number of complaints that are being raised. But then I think we have to go another level down. We will begin to benchmark companies against each other because I think, to the extent all of these companies do not adopt all of the guidelines, we want to evaluate whether that seems to make a difference in the complaint levels, and we will also want to look at the substance of the complaints that we continue to get over time.

I would hope that we will not see any more sweepstakes-type complaints because I expect the companies not to bill for those services in the future, but we may see some new type of fraud that we have not envisioned. So we will be watching the substance very closely as well.

I think, timeline, we probably need to give it about 6 months because we find that we are getting complaints today for fraudulent activities that took place in the January/February/March time frame. It takes consumers oftentimes that long before they actually send the complaints to us. So there will be a time lag, in all likelihood, before we see the kind of decline we would expect to see and complaints from the adoption of these guidelines today.

Senator COLLINS. Ms. Harrington.

Ms. HARRINGTON. We brought our first enforcement action in this area in April. We brought three separate actions against a total of six companies, and we have many more in the pipeline, and they will be coming out quickly.

The measure, first of all, of the effect of law enforcement is found in the deterrent effect that those cases have. We have had a large number of telephone calls from lawyers representing other billing entities, and they are streaming in and out of our office, and I take that as a measure of some deterrent effect from the law enforcement that we have done.

Second, as I mentioned, we are doing a rulemaking on this, and the greatest measure of our success, I think, will be the day, and it should come pretty soon, when we have in place a legal requirement that any billing entity, whether it is a LEC or a billing aggregator or a vendor who generates a bill, that any billing entity be able to prove that the customer, whose account is billed expressly, expressly authorized that billing. Until we have some kind of legal requirement in place, we are going to be working really hard to get it in place.

And, third, we will be studying our complaint data. As I mentioned, we have our Consumer Response Center that handles every consumer complaint that comes into the Commission, and all of that complaint data is available to me and every manager, lawyer, and investigator at the FTC, at their desk top. So I am looking at that every day to see whether the numbers are up and down and how much money consumers are losing.

And, fourth, the specific measure of the success of our law enforcement is how much money we get back for consumers. In these cases that we mentioned, consumers have lost millions of dollars, and our primary objectives, in bringing law enforcement, are to stop that ongoing fraud, and to return the money to consumers, and so I think everybody ought to judge us on our ability to do that.

Senator COLLINS. Thank you. I want to thank all of our witnesses this morning. I hope that you will continue to work very closely with the Subcommittee.

I do not view cramming as a small inconvenience. I view it as a growing consumer fraud. We have to act together and figure out how we can stop this rip-off of consumers using their telephone bills. I know that all of you share that objective, that goal. We may differ on the most effective means to get there. I do hope that the voluntary effort that has been undertaken, which I do view as a good first step, will be successful, but I am very concerned that unless we have very tough enforcement and a clear regulatory scheme to support that enforcement, that we may not get a handle on this problem.

So we will be continuing our oversight activities. We will be continuing to work with you, and I very much appreciate all of you taking the time to be here today. So I thank you very much.

I also want to thank the Subcommittee staff who have worked very hard on this investigation, including Tim Shea, John Neumann, Linda Algar, Mary Robertson, and Lindsey Ledwin. I feel very fortunate to have a staff that shares my very strong commit-

ment in the area of consumer fraud, and this is part of a series of hearings that we are doing.

The hearing record will remain open for 10 additional days, so that we may have some additional questions for all of the witnesses and any exhibits will be included in the hearing record.

Thank you for your cooperation, and this hearing is now adjourned.

[Whereupon, at 12:22 p.m., the Subcommittee was adjourned, subject to the call of the Chair.]

A P P E N D I X

**THE CASE OF THE PHANTOM PHONE CHARGES
Testimony of the National Consumers League
to the Senate Permanent Subcommittee on Investigations
by Susan Grant, Vice President of Public Policy and
Director, National Fraud Information Center
regarding telephone "cramming"**

July 23, 1998

Telephone "cramming," the placement of unauthorized miscellaneous charges on consumers' telephone bills, has skyrocketed to first place among the more than fifty categories of telemarketing scams reported to the National Fraud Information Center, a hotline operated by the National Consumers League. As the oldest nonprofit consumer organization in the United States, NCL is alarmed by this latest and most outrageous abuse of the telephone billing system. We appreciate the opportunity to share with the Senate Permanent Subcommittee on Investigations information about how cramming works and suggestions for how to stop it.

NCL's Role in Fighting Telephone-Related Fraud and Abuse

NCL is in the forefront of assisting consumers and law enforcement agencies in the fight against telephone-related fraud and abuse. In 1992 we created the National Fraud Information Center, a unique hotline service at 1-800-876-7060 through which consumers can get advice about telemarketing solicitations and report suspected fraud. We relay consumers' fraud reports to the Federal Trade Commission and more than 160 other law enforcement agencies at the federal, state and local levels. This alerts them to scams they may wish to investigate and gives them the documentation they need to shut down fraudulent operations. In 1996, we expanded our antifraud efforts into cyberspace with the launch of the Internet Fraud Watch. Now consumers can get advice about both telemarketing and Internet solicitations and report fraudulent promotions through our toll-free hotline or our web site, www.fraud.org.

These services are free of charge and supported by the members of the National Consumers League and contributions from corporations and trade associations that are concerned about consumer fraud and fairness in the marketplace. We also work in partnership with the private sector, government agencies and other nonprofit groups through the Alliance Against Fraud in Telemarketing, a coalition coordinated by NCL to promote public awareness about telemarketing and Internet fraud.

Abuses of the Telephone Billing System

Among the many types of telemarketing fraud that consumers report to our NFIC hotline, there are several categories that relate to the telephone billing system: pay-per-call scams involving undisclosed charges or misrepresented services provided through 900 or 800 numbers; slamming, where consumers' telephone carriers are switched without their knowledge or

consent; prepaid phone cards that do not work or do not provide consumers with the calling time they paid for. In late October of 1997, we added the category of cramming to our NFIC database because we were receiving reports from consumers about mysterious charges that were appearing on their phone bills from companies they'd never heard of for voice mail, personal 800 numbers, paging, memberships, and other services that they never asked for.

Actually, cramming was not new, although the term was only recently coined by a reporter from the Chicago Sun-Times. We first began to see what we now call cramming a few years ago in connection with some consumers' complaints about 900 numbers. In those cases, not only did they have disputes about the charges for the 900 number calls or the services provided through them, but they also noticed that after having made those calls recurring charges were popping up on their monthly phone bills for things like voice mail or club memberships. Those complaints were all recorded in our pay-per-call category. However, over time it became clear that cramming can happen in many different ways and that it needed to be categorized and tracked separately.

The common thread that runs through pay-per-call scams, slamming and cramming is that the telephone billing systems are being used, and abused, as a means of fraudulently obtaining money from consumers. In fact, in the first six months of 1998, 47 percent of all of the payments consumers reported making in fraudulent telemarketing transactions were through their telephone bills. And of all these scams, cramming is the worse because it is truly a phantom charge -- consumers are being billed for services they not only did not request but in most cases never even received.

Cramming Reports to the NFIC

Between the end of October and the end of December, 1997 the NFIC received nearly 200 reports of cramming, an average of about 100 per month. Over the next six months, from January through June of 1998, 2,071 cramming reports were made to the NFIC. That is an average of 350 per month. Cramming is now the top telemarketing fraud reported to our hotline, beating advance fee loan scams, at number 2, and slamming, at number 3, by a margin of about two-to-one. However, we know that this is just the tip of the iceberg. Obviously, not all consumers complain to us, nor could our small staff handle the volume if they did. The numbers also do not reflect consumers who call our hotline for general advice or who have a cramming problem but do not have the details, such as the company name or address, necessary for us to take a report.

The charges that appear on consumers' phone bills are relatively small, in the range of \$5 to \$40. But since most of these charges are recurring on a monthly basis, and in light of the fact that consumers often don't notice them right away, they can add up to significant amounts. We have received cramming complaints about accrued charges totaling more than \$2,000. In the cramming incidents reported to the NFIC during the first six months of 1998, the average amount in dispute was \$42.

We have heard from consumers in nearly every state about crammers in nearly every state. We have provided the committee with a map representing cramming complaints in the first six months of 1998 to illustrate the fact that this problem touches constituents in every jurisdiction. Furthermore, crammers target both residential and small business telephone customers. No one who has a telephone is immune from this type of fraud.

How Cramming Happens

We believe that cramming is more prevalent than slamming because it is easier to do. Consider the fact that in slamming, the fraudulent company makes its profit from the charges for the calls, usually long-distance calls, that the consumers make. To accomplish this, the fraudulent company must actually be able to provide the telephone service. Usually, the company buys long-distance service in bulk from a major carrier at wholesale cost and then resells that service to consumers. The problems arise when the consumers have not agreed to switch their service to the company and the charges for the calls are far more than their original carriers would have made.

Cramming is phantom phone billing because the fraudulent company makes its profit from what are usually flat monthly fees for miscellaneous services that it may never even have provided. It is not necessary for a company to have the facilities or arrange with others to provide voice mail, paging, personal 800 numbers or other services in order to arrange to bill consumers for those services. Cramming is pure profit through fraud and deception.

It is also not necessary for the crammer to have had any contact at all with the consumer who is being billed for the charges. Directly or through a bill clearinghouse acting on its behalf, the company simply represents to the local telephone carrier with whom a billing contract has been made that the customer at a particular number has agreed to purchase the service. Therefore, it is not surprising that in many of the cramming reports we receive, consumers have absolutely no idea how these charges got on their bills. Their numbers could have been harvested in many different ways.

When consumers think they know how it might have happened, the most common method reported to the NFIC is through contact with a 900 or 800 number pay-per-call service. In many instances, these are psychic hotline that consumers have called because they advertised free readings. In some cases, consumers became victims of cramming without even getting the readings. For example, one Massachusetts woman called an 800 number psychic service and left her name on its answering service. She never talked to a psychic, but monthly charges of \$27 began to appear on her phone bill for voice mail she never authorized.

Another consumer found a message on her answering machine from a psychic line soliciting her business. She never called back but she, too, began to find charges on her phone bill for services she did not request. An Indiana woman got a phone call from a psychic service advising that she was about to receive a lot of money. She was asked to verify her phone

number, which she did, and then was charged on her telephone bill for a club membership she never agreed to.

The second most frequent method of cramming reported to the NFIC is by filling out a contest entry form at a fair, a mall, a store or some other location. One woman's young son filled out a contest entry form that resulted in monthly fees on her phone bill for a personal 800 number. When a Maryland man questioned a monthly fee on his phone bill, he was told by the company that he must have filled out a sweepstakes form and that the charge on his bill was the entry fee. If the consumers remember filling out an entry form, they certainly do not remember seeing anything indicating that they were agreeing to pay for something. It may have been buried in the fine print, or there may have been no disclosure at all.

Cramming can occur in many other ways. Here are some examples:

- A Texas woman received a call from a company asking to verify her address. She said yes, it was correct, and then began to get unauthorized charges on her phone bill. When she disputed them, the company said that her "yes" answer was authorization for the services;
- A telemarketer solicited a woman from Ohio, offering to place ads for her on the Internet. She declined, but then was crammed for unauthorized services;
- A Maryland man received a telephone solicitation for long distance service. He asked for the information to be sent to him in writing. He never received it, but was subsequently charged for an unordered paging service;
- A telemarketer offered a New York woman the opportunity to join a travel club. She asked for written information, which was sent to her, but never joined the club. However, charges for club membership began to appear on her phone bill;
- A New York man received a letter from a company informing him that he would be charged for a personal 800 number unless he contacted the company to decline. He tried to call twice but was left on hold a total of two hours;
- A man in Virginia got a call informing him that he had won a trip to Las Vegas and requesting a \$20 "processing fee," which he agreed to pay. However, he then received an unauthorized charge of \$41 on his phone bill for voice mail service. When he contacted the company to question the charge, he was told that his long-distance service was also being switched;
- A Texas woman received a notice in the mail that she had been enrolled in a plan through which she could buy merchandise at discount prices and that the \$5 monthly charge would be billed through the telephone company unless she canceled. She had never asked to be enrolled in the program.

In one of the most creative cramming cases reported to the NFIC, a man called a company in response to its television advertising for coupons that would entitle pet owners to discounts on veterinarian services, grooming products, dog food, etc. He agreed to pay \$20 for the coupons. However, when he attempted to use them, he found that they were not accepted by

the vendors. Even worse, he found that he was being charged \$10 per month on his telephone bill for a pet club membership. When he called the company to dispute the charges, he was told that there was a recording of his agreeing to the services. But all he ever agreed to was to pay for the coupons, and they turned out to be worthless!

It's Not Easy to Spot Phantom Charges

One of the biggest problems with cramming is the fact that it is so sneaky. People's phone bills are confusing enough as it is – there are lots of different charges for long-distance access, state and federal taxes, support for getting schools wired to the Internet, local calling service, toll service, and a variety of optional services such as Caller ID. It is easy to bury phantom charges for unauthorized miscellaneous in consumers' phone bills, especially if they are not clearly described.

We have provided the subcommittee with samples of some bills to show you how the charges may appear. They include vague descriptions such as:

- “monthly fee”
- “call manager”
- “basic access”
- “monthly service fee”
- “min use fee”
- “special plan”
- “800 service”

Some of the most misleading examples involve companies whose names seem to be designed to sound like a part of the consumer's normal telephone service, such as “Enhanced Phone Services” or “Axces.” Bills may also show charges for “club membership” or simply “membership.”

Even when they are more descriptive, such as “voice mail,” “calling card” or “paging,” consumers may not notice the charges right away. In our busy lives, many of us simply look at the bottom line on the first page bill summary and make out our checks for the total due. Consumers need to scrutinize each page of their phone bill every month to ferret out unauthorized charges, whether they are for miscellaneous services or for toll calls, collect calls, 900 number calls or other services.

The Nightmare of Disputing Cramming Charges

Once consumers discover they've been crammed, their problems are only beginning. Following the directions on the bill, they call the number provided on that page for questions. This connects them to either the crammer or a billing aggregator acting on its behalf. However, many consumers report being left on hold for inordinate amounts of time, getting incessant busy signals, or reaching only a recorded answering service.

If they do manage to connect to a live customer service representative, they are often lied to, abused or referred to someone else. They are told that they authorized the service when they did not, and presented with documentation that is fabricated, such as forged signatures or doctored tape recordings. Sometimes their requests for documentation are simply refused. In one case, a man who disputed paging charges was told he'd have to return the pager before a credit would be processed. However, he never received a pager, so he had nothing to return. Consumers report that they are threatened that their phone service will be cut off and their credit will be ruined if they refuse to pay the disputed charges. Sometimes they are sent from one company to another, all affiliated in some way with the crammer and each denying responsibility.

If the company agrees to credit the consumer's account, it may be for only some and not all of the charges that have accrued. Or the company may promise a credit and never make it. And if the charge is removed one month, it may pop up again on the next month's bill, requiring the consumer to go through the dispute process all over again.

In desperation, consumers often contact their local telephone carriers, who are performing the billing services. Until recently, they have not always been as helpful as they should be. They have often insisted that customers speak to the crammers, even when consumers have found it impossible to do so. And because their relationship may be with billing aggregators who represent multiple service providers, the local telephone carriers may not even know the names of the companies for whom they are billing or how to reach them. This lack of information makes it difficult for consumers to find out who their complaints are against and for law enforcement agencies to investigate. It also makes it difficult for the local telephone carriers to take action against companies that are abusing their billing systems.

Now the major local telephone carriers are working individually and collectively to respond to the cramming crisis. Some are instituting policies of removing disputed miscellaneous charges from consumers' bills even if they have not contacted the crammers first. They are changing their billing agreements to provide for termination if problems rise to specified levels. These and other voluntary measures are helpful, but more needs to be done.

Suggestions for Stemming the Cramming Crisis

Our fraud center counselors tell us that consumers who report cramming are more incensed than those who contact us about any other type of telemarketing fraud. That is because they are innocent victims of a scam in which their telephone accounts have been invaded by forces beyond their control. They feel violated and do not understand how anyone can arrange to bill them for services they never agreed to purchase. Consumers want to get back control over their telephones. We offer the following ten ways that this can be accomplished:

1. **Ban deceptive methods for selling miscellaneous services.** Miscellaneous services should not be promoted through contest entry forms, pay-per-call lines, or negative option solicitations.

2. Allow charges on telephone bills only for telephone-related services.

Consumers assume that the charges on their phone bills are related to their telephone service. They do not expect that there will be charges for club memberships or other non-telecommunications services, so they do not look for charges of that nature on their bills.

3. Require local telephone carriers to obtain information about the service provider and any billing aggregator or clearinghouse acting on its behalf.

Telephone companies that offer billing and collection services have a responsibility to their customers to ensure that they know who they are billing for and that the company, and the services, are legitimate.

4. Impose strict liability on billing aggregators to share responsibility for abuses.

Companies that arrange for billing and collection on behalf of service providers and/or provide customer service functions must also be responsible to ensure that the providers are legitimate.

5. Require notice to consumers when billing for miscellaneous services is instituted.

The local telephone carriers should contact consumers, by phone or letter, as soon as they have been asked to bill them for miscellaneous services. Notice should be separate from and precede the bill. It should include a description of the services, the cost and other terms, the name of the service provider, and instructions on how to cancel the charges if the service was not authorized. The cost of this notice can easily be incorporated into the carriers' billing contracts. Early notice is essential to stop crammers in their tracks.

6. Require truth-in-billing.

Congress should mandate that miscellaneous charges be clearly and adequately described and that the names, addresses and phone numbers of the services providers and any billing aggregators acting on their behalf be included.

7. Provide consumers with dispute rights.

Similar to the provisions of the federal 900 Number Rule regarding pay-per-call charges, consumers be able to dispute unauthorized charges on their phone bills for miscellaneous services without fear of losing their telephone service. Procedures should be set for disputing charges, and consumers' dispute rights should be explained on their bills. The burden of proof should be on the service providers, not the consumers, to show that the charges are legitimate.

8. Give states and individual consumers the right to sue crammers in federal court.

The states play an important role in stopping abuses and obtaining redress for consumers. They should be able to obtain injunctions and other relief on a nationwide basis. Consumers should also have individual rights of action to pursue crammers for damages and penalties.

9. Levy serious penalties against crammers.

Crammers should be hit with steep fines and penalties. Repeat offenses should be treated as criminal offenses.

10. **Give consumers better controls.**

We know from our experience with slamming, and now with cramming, that traditional verification procedures can easily be abused. Written authorizations are forged, audio tapes are doctored, third-party verification companies may actually be in cahoots with the crammers. While we believe that the consumer notification we have suggested will be extremely , it is still "after the fact." To give consumers more control on the front-end, they should be able to keep charges for miscellaneous services from being placed on their bills unless they have directly authorized their local telephone companies to bill for them. This could be accomplished by a blocking mechanism similar to the "PIC freeze" option to prevent unauthorized carrier switching, or a PIN system, or some other means. We are confident that the telecommunications industry, which has devoted considerable creativity and resources into developing miscellaneous services to sell consumers, can also develop services to protect them.

Conclusion

The free and competitive marketplace only functions properly if consumers are able to make informed choices about the products and services they wish to purchase. While technological advances and increased competition has led to more choices for consumers, we need to ensure that it is they who are actually making those choices, not phantoms who are billing them for products or services they never requested.

We look forward to working with this committee, the Congress, and members of the industry to stop this egregious abuse of the telephone billing system and preserve the integrity of the telecommunications marketplace.

Respectfully submitted by:

Susan Grant, Vice President for Public Policy
Director, National Fraud Information Center
National Consumers League
1701 K Street NW, Suite 1200
Washington, DC 20006
(202) 835-3323 fax (202) 835-0747

Testimony of

Lawrence E. Strickling

Deputy Chief, Common Carrier Bureau

Federal Communications Commission

Before the

United States Senate

Committee on Governmental Affairs

Permanent Subcommittee on Investigations

Hearing on Telephone "Cramming"

July 23, 1998

Good morning Chairwoman Collins and members of the Subcommittee, thank you very much for the opportunity to appear before you today to discuss the rapidly-growing consumer fraud known as "cramming" and the actions of the Federal Communications Commission to combat the problem.

From the viewpoint of the consumer, the essence of "cramming" is quite simply the appearance on their local telephone bill of charges that they did not knowingly authorize. These charges run the gamut from failure on the part of the service provider to clearly and conspicuously disclose the terms of the service being offered to the consumer, to the fraudulent submission of charges that the consumer simply never ordered. In either case, the practice constitutes consumer fraud.

Indeed, regardless of the cause, consumers have a right to be protected from any charge appearing on their telephone bill that they did not knowingly authorize. Consumers also have a legitimate expectation to have services and charges clearly and conspicuously described both at the point of sale and on the telephone bill itself. Consumers expect, rightly so, that their local service providers render bills that provide billing information in a readily understandable, and consumer-friendly manner, and that they should not have to pay any unauthorized charges. Consumers also want to be able to control the types of charges that appear on their telephone bills.

Parties in the Chain

In order to understand the underpinnings of this problem -- as well as its possible solutions -- it is important to understand the relationships of the players involved.

Generally, as many as three different parties are involved in the inclusion of charges on a customer's telephone bill: the local exchange company that submits the local bill to its end-user customer, a billing consolidator or clearinghouse, and a service provider.

The telephone bill that consumers receive every month from their local telephone company contains not only charges for local telephone service, but also charges from other service providers such as long distance carriers. However, while large long distance carriers often contract directly with the local exchange company for the provision of billing and collection services, billing consolidators or clearinghouses typically play a middleman role for service providers that are too small -- or have too few transactions -- to contract directly with each local exchange company for billing services. Many of the service providers that utilize billing clearinghouses are common carriers, particularly resellers of long-distance service. Other service providers, however, are not carriers, but provide telecommunications-related services -- such as providers of voice mail, calling card and paging services -- often in competition with similar services provided by the local exchange companies. Finally, some charges that appear on local telephone bills are completely unrelated to telecommunications services, for example, a psychic club membership fee. These non-common carriers, as well as the billing clearinghouses themselves, are currently not within the enforcement jurisdiction of the FCC.

In terms of billing services provided by the local exchange companies to carriers, clearinghouses, and other service providers, the Commission detariffed and deregulated these services more than a decade ago. The Commission ruled that billing and collection

are not common carrier services themselves but reaffirmed that these services are within the Commission's ancillary jurisdiction under Title I of the Communications Act because they are "incidental" to the transmission of communications services. Nonetheless, the Commission found that deregulation of local exchange carrier billing and collection services was appropriate because carriers and other parties seeking to procure billing services had significant alternative sources for the provision of these services. In particular, this 1986 Commission order concluded that market forces should prevent carriers from charging their billing and collection customers excessive rates or engaging in unreasonable practices.

Consistent with this deregulatory framework, the Commission does not require the local exchange companies to provide billing and collection services for any entity requesting such service. The carriers have wide latitude to decide for whom they will provide such service, the terms under which they will provide service, and the grounds under which they will discontinue providing service to customers who refuse to play by the rules. The Commission, however, retains general authority under the Act to bring enforcement actions against carriers for unjust and unreasonable practices in connection with their billing and collection activities, including where such practices abuse the party being billed, and to adopt rules where necessary.

Local companies should have an interest in protecting their customers from unscrupulous service providers. Customers in the first instance look to their local carrier to fix these problems and prevent them from occurring in the future. Recognizing this,

Chairman Kennard, before resorting to writing new consumer protection rules, requested that the billing carriers voluntarily adopt policies to cure this problem. These carriers have recently taken serious steps in that direction, as I will outline for you in a moment, and they have done so much more rapidly than the Commission could have done by undertaking a formal rulemaking on these issues.

How Does Cramming Occur?

Cramming occurs when any of the parties in the billing chain described above causes unauthorized charges to appear on the consumer's local telephone bill. Many crammers utilize practices that have been prohibited by the Commission with respect to slamming. For example, some crammers appear to use sweepstakes entry forms located at crowded shopping malls that include small print -- or no disclosure at all -- authorizing charges to be placed on the consumer's phone bill. Other crammers advertise free promotions to obtain the consumer's name, address and phone number, and then bill the consumer for other services without authorization.

Whatever the specific scheme, the unscrupulous service providers take advantage of the billing clearinghouses, the local exchange carriers and the consumer to perpetrate their fraud. They hope that the billing clearinghouse and local telephone company do not exhaustively screen the products and services for which they are billing nor verify the charges they are passing along. And they hope consumers do not review their bills carefully and go ahead and pay for these unauthorized charges. Specifically, consumers

may be confused about what services are included on their bill, particularly where their local telephone bills do not adequately inform them of the service and identity of the service provider in a user-friendly fashion. Many consumers also are concerned that they may have their local service disconnected for failure to pay these unauthorized charges. While state regulation prohibits such termination in most instances, crammers clearly rely on this misapprehension to pull off their fraud.

What is the FCC Doing to Combat Cramming?

The incidence of cramming complaints has grown extremely quickly. In the first half of this year, we have processed on average more than 300 complaints each month from consumers claiming to have been crammed, ranking it with slamming as one of the single largest sources of consumer complaints received by the Commission. There is no simple explanation for why this problem has developed so rapidly. Unlike slamming, the rise in cramming incidents does not appear to be related to the arrival of new competition in an industry. The local telephone companies have been providing third-party billing services for many years. Like slamming, however, the entities engaging in this fraud appear clearly to be taking advantage of consumer confusion with respect to their local telephone bills.

Chairman Kennard's Cramming Initiative: As a result of this sudden rise in complaints received by the Commission and, not incidentally, by concerns expressed by various Members of Congress, Chairman Kennard called together representatives of the

local exchange companies and challenged them to find a solution to this problem. While the Commission could have tried to attack this issue by creating new rules to re-regulate local exchange carrier billing and collection services, such a process might have taken at least a year to complete. Consumers needed faster action than the normal regulatory process would have provided.

At the May 20th kick-off to this initiative, Chairman Kennard emphasized that the industry either would have to find a way to stop cramming soon, or they likely would have legislative and regulatory solutions imposed upon them. The industry took this challenge to heart, and has responded quickly by developing voluntary "best practices" guidelines to prevent unauthorized charges from appearing on the bills that they issue to their local service customers. In several meetings over the past two months, the local exchange carrier industry has met to draft these guidelines -- either as a full group or in the form of smaller working groups. This process also included two open forums at which representatives of the billing clearinghouses and service providers, and then representatives of consumer groups and the law enforcement community, were invited to provide comments on the draft document. The group then modified the guidelines in an effort to reflect comments provided at these forums.

These best practices include the following provisions that local carriers will decide whether and how to implement:

- * obligations on the part of both the local exchange companies and the clearinghouses to screen services and marketing materials before agreeing to bill.

- * procedures for monitoring complaint levels generated by each service provider and program, and establishment of complaint level thresholds for terminating billing services for providers or programs.
- * requirements for appropriate authorization and verification procedures to ensure that consumers have, in fact, knowingly approved charges to appear on their bill.
- * assurances that the bills received by consumers provide clear and comprehensible information concerning the services being charged and how the consumer may question or challenge the charges, including a toll free number to reach representatives that can resolve any complaints.
- * establishment of customer dispute resolution procedures, including providing an immediate credit to consumers who have been crammed.
- * commitments to work with appropriate law enforcement and regulatory agencies to assist in eliminating cramming.
- * recognition of the need to provide consumers with options for controlling the types of charges that may appear on their local telephone bills, such as blocking the inclusion of any charges for non-common carrier services.

These practices should go a long way towards weeding out the bad actors in this industry by cutting off access to billing services to those engaged in unfair or deceptive marketing, and providing consumers the ability to recognize and challenge improper charges before they make any payment.

A few observations about this process. First, the local exchange companies were able to complete this process in two months -- it would have taken the Commission many more months to complete a rulemaking. Second, it needs to be recognized that this was not a process that was directed or controlled by the Commission. Chairman Kennard's challenge was certainly the catalyst for this initiative, and the carriers should be congratulated for responding in a timely and meaningful fashion. However, this process was envisioned to be one that the local exchange companies undertook to address their own unique role in the billing process and their ability to control what goes on their bills. And the perspective of the resulting "best practices" is accordingly limited to policies and procedures these carriers can reasonably implement to combat cramming.

These "best practices" are not intended to be the complete solution to the problem of cramming. The other segments of this industry must also commit to doing what is necessary to eliminate this problem. To this end, a group of the largest billing clearinghouses last week announced their own policies to prevent unauthorized charges from being submitted on consumers' bills. I also understand that certain segments of the service provider industry have been working on their own "best practices" for programs that utilize local exchange carrier billing services. These ongoing efforts by each segment of this billing process underscores, I believe, a recognition on the part of the legitimate participants in this industry that it is in their own best interests to develop aggressive measures to stop cramming.

Enforcement Activities: The Commission fully intends to attack cramming where we can. Indeed, we are currently in the final stages of investigations into the practices of long distance providers that appear to be engaging simultaneously in slamming and cramming. As is our practice with slammers, we anticipate issuing forfeiture notices in the near future which will assess sizable fines against carriers for their cramming practices as well.

As I mentioned previously, however, the Commission's jurisdiction stops at common carriers. Similarly, I understand that the FTC is restricted from exercising its jurisdiction against common carriers. As a result of this jurisdictional split, some of the players in this industry -- the bad actors -- are attempting to play both sides against the middle. The two agencies must work closely to ensure that no company uses this limitation to evade the law. Indeed, the agencies have worked informally to share information and forward complaints where violations appear to cross these jurisdictional boundaries.

Consumer Education Initiatives: We are also educating consumers about the importance of closely reviewing their telephone bills and to help them actually understand these bills. Attached to this testimony is a consumer bulletin on these issues that the FCC distributes broadly through our internet home page, through the press, and to consumers who contact the Commission's toll-free call center (1-888-CALL-FCC) with cramming complaints and inquiries. Also attached are Congressional notes prepared to assist Congressional offices in responding to inquiries from their constituents. Consumer

education is an essential part of the effort to stop the flow of money before it ever gets to crammers.

Proposed Legislation

We believe the more cops on the beat in this area the better. Congress can help us achieve this goal by ensuring that both the FCC and the FTC have broad jurisdiction over all of the entities perpetrating this fraud on consumers. Specifically, Congress should extend the jurisdiction of the FCC to reach the practices of the billing clearinghouses and service providers when unauthorized charges appear on consumers' telephone bills. At the same time, Congress should clarify that the Federal Trade Commission has jurisdiction to ensure fair advertising and marketing practices, whether or not the entity responsible for cramming is a common carrier. Although the combined effect of these changes might be an overlap in jurisdiction between the FTC and FCC, it is much more effective for the two agencies to coordinate enforcement activities where each has sufficient authority to deal with a matter, than to allow the bad actors to delay or avoid prosecution by taking advantage of potential gaps in jurisdiction. I am confident that, given the necessary authority, the FCC and FTC will take advantage of each other's respective expertise more effectively to combat cramming.

Once again, I thank the Subcommittee for this opportunity to discuss this important issue. I look forward to working with you to protect consumers from this fraud.

CONSUMER INFORMATION

Federal Communications Commission, 1919 M Street NW, Washington, DC 20554

Invalid Or Unclear Charges On Local Telephone Bills

What Types Of Charges Can Appear On My Local Telephone Bill?

In addition to providing local telephone service, your local telephone company may bill you for services provided by other companies, such as long distance telephone calls or "information services" accessed through 900 numbers, like psychic hotlines. Most of these charges are incurred by consumers by either placing specific calls or authorizing companies to provide specific types of telephone services. For many consumers, having these charges included on their local telephone bill is convenient.

Recently, however, consumers have complained to the FCC about charges on their telephone bills that do not clearly state what service was provided. In many cases, consumers claim they are being billed for services they did not order. These practices are sometimes called "*cramming*."

The FCC is concerned about the appearance of invalid, unclear or possible fraudulent charges on consumers' telephone bills. Examples include:

- Charges for calls that were not made by the consumer or that were placed to toll-free numbers;
- Charges for services that are explained only in general terms, such as "voicemail," or "calling plan," or "membership;"
- Charges for "800 number service;" and
- Charges identified as "monthly fee" that appear on a monthly basis.

How Do Invalid Or Unclear Charges Occur?

Local telephone companies serve as billing agents for many long distance and information service providers. Invalid or unclear charges can occur when a long distance telephone company or an information services provider sends inaccurate billing data -- whether through oversight or intentionally -- to the local telephone company. The local telephone company, in turn, bills consumers for the calls or services.

Unclear charges also occur when a long distance telephone company or an information services provider legitimately imposes a charge but either insufficiently or improperly describes the service for which the consumer is being billed.

What Is The FCC Doing About These Types Of Billing Problems?

Recently, the Commission's staff began an inquiry into the causes behind invalid or unclear charges on bills rendered by local telephone companies on behalf of other companies. The Commission is also working jointly with the Federal Trade Commission and other regulatory agencies that may have jurisdiction over companies that are engaged in "cramming." Examples of actions the Commission has taken include:

- In April 1997, Commission staff invited members of the local telephone, information services provider, and long distance telephone industries to separate meetings in order to better identify why invalid or unclear charges appear on consumers' telephone bills, and to find solutions to this problem.
- In June 1997, Commission staff convened a public forum, with regulators from several states participating, to discuss recurring billing problems such as inaccurate or incomplete information on local telephone bills; inaccurate calculation of charges; insufficient explanations for certain charges; and mistaken or false charges.

The forum identified various ways that members of industry, state and federal regulators, and others can reduce this problem. A transcript of the forum is available on the FCC's Web Site at http://www.fcc.gov/Bureaus/Common_Carrier/Other/lec62497.html

- As a result of its industry meetings and the public forum, the Commission is considering three separate petitions for declaratory rulings or rules on various issues associated with charges by other companies on local telephone bills.

Tips For Consumers

- ✓ Allow others to use your telephone only for calls and services you authorize.
- ✓ Carefully read all forms and promotional materials -- including the fine print -- before signing up for telephone services.
- ✓ Companies compete for your telephone business. Use your buying power wisely and shop around.

If you think that a company's charges are too high or that their services do not meet your needs, contact other companies and try to get a better deal.

- ✓ Keep a record of the telephone services you have authorized and used -- including calls placed to 900 numbers and other types of information services. These records can be helpful when billing descriptions are unclear.
- ✓ Carefully review your telephone bill every month. Look for company names you do not recognize, charges for calls you did not make, and charges for services you did not authorize.

Keep in mind that you may sometimes be billed legitimately for a call you placed or a service you used -- but the description for the call or service may be unclear.

- ✓ Immediately call the company that charged you for calls you did not make or services you did not authorize. Ask the company to explain the charges and request a billing adjustment for incorrect charges.

The name of the company and the telephone number to call about billing questions should be included with your local telephone bill. This information is often at the top of the pages listing the charges for each company.

- ✓ Explain your concerns about unclear or unauthorized charges to your local telephone company. A customer helpline number for your local telephone company is usually included on the front page of your telephone bill.
- ✓ If the company responsible for the charges does not sufficiently respond to your concerns, ask your local telephone company what the procedure is for removing incorrect charges from your bill.

**What Can I Do If The Companies
Will Not Remove Incorrect
Charges From My Telephone Bill?**

You can file a complaint with the proper regulatory agency.

You should contact your state regulatory commission for calls placed to a location within your state or telephone services provided within your state. Your local or state consumer office should be able to provide the telephone number and address for your state regulatory commission. This information may also be listed in the government section of your telephone directory.

You may file a complaint with the Federal Trade Commission regarding charges on your telephone bill for non-telephone services (for example, "content" services like psychic hotlines). Consumers can obtain information about the FTC's regulations and how to file a complaint by writing to the Federal Trade Commission, Public Reference Branch, Drop H240, Washington, D.C. 20580 – or by calling the FTC's Consumer Response Center at (202)326-3128.

In addition, you may file a complaint with the FCC regarding interstate or international services and charges. **Complaints about telephone-related issues must be filed with the FCC in writing.** There is no special form to fill out to file a complaint with the FCC. Simply send a typed or legibly printed letter in your own words to: FCC, Common Carrier Bureau, Consumer Complaints, Mail Stop Code 1600A2, Washington, D.C. 20554. The following information should be included in your complaint letter:

- ✓ Your name, company name (where appropriate), address and a daytime telephone number (including the area code).
- ✓ A brief description of the complaint; the telephone number(s) involved with the complaint; the date(s) of the incidents involved with the complaint; the names, addresses and telephone numbers for the companies involved with your complaint; the names and telephone numbers of the company employees you called in an effort to resolve the complaint, and the dates you spoke with them; and the action you are requesting, such as a credit or refund for disputed charges.
- ✓ Copies of the telephone bill(s) listing the disputed charges and other documents involved with the complaint. The disputed charges should be circled on the copies of the telephone bill(s).

Further consumer information on telephone-related issues is available by calling the FCC toll-free at **1-888-225-5322**, or on the FCC's Web Site at http://www.fcc.gov/ccb/consumer_news/

Congressional Notes

Cramming

Actions Your Constituents Can Take

Your constituents can protect themselves by:

- Reading all forms and promotional materials -- including the fine print -- before signing up for telephone services.
- Keeping a record of the telephone services they have authorized and used -- including calls placed to 900 numbers and other types of information services. These records can be helpful when billing descriptions are unclear.
- Carefully reviewing their telephone bill every month. Look for company names they do not recognize, charges for calls they did not make, and charges for services they did not authorize.
- Immediately calling companies that charged them for calls they did not make or services they did not authorize. Ask the companies to explain the charges and request billing adjustments for incorrect charges.
- Explaining their concerns about unclear or unauthorized charges to their local telephone company.
- Asking their local telephone company what the procedure is for removing incorrect charges from their bill if the companies responsible for the charges do not sufficiently respond to their concerns.

Your constituents can take the following actions if companies will not remove incorrect charges from their telephone bills:

Contact their state regulatory commission for calls placed to locations within the same state or telephone services provided within the state.

Contact the Federal Trade Commission regarding charges on their bill for non-telephone services by writing to the Federal Trade Commission, Public Reference Branch, Drop H240, Washington, D.C. 20580 -- or by calling the FTC's Consumer Response Center at (202)326-3128. Non-telephone services include "content" services such as psychic hotlines.

Send a written complaint letter to the FCC regarding interstate or international services and charges. Your constituent can obtain information on how to file a complaint on the FCC's Web Site at http://www.fcc.gov/ccb/consumer_news/ or by calling the FCC's National Call Center toll-free at 1-888-CALL FCC (1-888-225-5322).



Remember that companies compete for their telephone service business. Your constituents should use their buying power wisely and shop around to find the best deal for their service needs and calling patterns.

Congressional Notes

Cramming

Invalid Or Unclear Charges On Your Constituents' Local Telephone Bills

Cramming is a term sometimes used to describe the practice of adding charges to constituents' local telephone company bills for services that are not clearly described. In many cases, constituents claim they are being billed for services they did not order.

The FCC is very concerned about these types of charges and has urged local telephone companies and other billing service providers to work with the FCC in order to adopt an industry code of practice to prevent cramming.

Examples of cramming include charges for:

- calls that were not made by the constituents or that were placed to toll-free numbers;
- services that are explained only in general terms, such as "voicemail," or "calling plan," or "membership;"
- "800 number service;" and
- services identified as "monthly fee" that appear on a monthly basis.

How Invalid Or Unclear Charges Occur

Local telephone companies commonly serve as billing agents for many long distance and telephone information service providers. Examples of telephone information services include psychic advice; product information; and so-called "adult" services and "chat" lines.

Most of these charges are incurred by constituents by either placing specific calls or authorizing companies to provide specific types of telephone services. For many constituents, it is convenient to have these charges included on their local telephone bills.

Invalid or unclear charges can occur when long distance telephone companies or telephone information service providers send inaccurate billing data -- whether through oversight or intentionally -- to the local telephone companies. The local telephone companies, in turn, bill constituents for the calls or services.

Unclear charges also occur when long distance telephone companies or information service providers legitimately impose charges but either insufficiently or improperly describe the services for which the constituents are being billed.

PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION ON
"CRAMMING"

Before the
SUBCOMMITTEE ON INVESTIGATIONS
of the
GOVERNMENTAL AFFAIRS COMMITTEE
UNITED STATES SENATE

Washington, D.C.

July 23, 1998

Mr. Chairman, I am Eileen Harrington, Associate Director of the Federal Trade Commission's Division of Marketing Practices in the Bureau of Consumer Protection. I am pleased to be here today to provide testimony today on the subject of cramming and the Federal Trade Commission's efforts to combat this novel consumer protection problem.¹

I. Introduction and Background

A. The FTC and its Law Enforcement Authority

The FTC is the federal government's leading consumer protection agency. The Commission's statutory mandate is to promote the efficient functioning of the marketplace by taking action against unfair or deceptive acts or practices, and increasing consumer choice by promoting vigorous competition. The Commission fulfills this mandate by enforcing the Federal Trade Commission Act.² The Commission pursues fraudulent activity like cramming under this statutory authority through law enforcement actions in federal district courts seeking temporary and permanent injunctive relief, and, ultimately, restitution to injured consumers. Using this

¹ The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own.

² 15 U.S.C. § 45(a). The Commission also has responsibilities under 40 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which establishes important privacy protections for consumers' sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces over 30 rules governing specific industries and practices, *e.g.*, the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

authority, the Commission has recently brought a number of actions against crammers. I will describe those actions in a moment. The FTC Act provides the Commission with broad law enforcement authority over virtually every sector of our economy. However, the statute creates some exceptions to the Commission's broad jurisdiction.³ As discussed below, one of these is for common carriers subject to the Communications Act of 1934 (47 U.S.C. § 151 et seq.), and this exception creates some unintended complications for the Commission in its efforts against cramming. I will discuss this problem in a moment.

II. The Practice of "Cramming"

A. Background: The Telephone Billing and Collection System

"Cramming" is the practice of causing unauthorized charges for a variety of goods or services to appear on consumers' telephone bills. Cramming brings into the 1990's an age-old abusive practice: charging consumers without their authorization for services they have not purchased. It is novel only in that it uses a previously unavailable means to effect unauthorized billing -- namely, the telephone billing and collection system.

The possibility that consumers might be billed on their phone bills for anything other than transmission of telephone calls is a recent development. The telephone billing and collection system, like the rest of the telecommunications system, was devised and used exclusively by

³ The exclusions are: "banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. § 181 et seq.), except as provided in section 406(b) of said Act (7 U.S.C. § 227(b))." 15 U.S.C. § 45(a)(2).

AT&T when it maintained a monopoly over telephone services in the United States. The charges handled by the telephone billing and collection system were limited to those generated through consumers' use of the telephone transmission services.

This situation began to change with the break-up of AT&T. At that point, the units of AT&T that had become the local exchange carriers ("LECs") took over responsibility for billing and collection. An important result of this change was that the telephone billing and collection system that had previously served a single vendor began serving several vendors. The LECs billed and collected on their own behalf for local telephone services, and on behalf of AT&T, Sprint, MCI, and perhaps a few others, for long distance service.

Now, some years later, increased competition in the telecommunications marketplace has brought a corresponding proliferation of innovative telephone-related products and services. These developments have radically changed the character of the telephone billing and collection system. It must now serve many vendors, not just a few, selling many products and services, not just one.

Many of these products or services, such as voice mail, are variously called "information" or "enhanced" services. While not "basic" telephone service, *i.e.*, transmission of telecommunications, these services at least are offered and used through the telephone. Other products now billed on the telephone, however, are completely unrelated to telephone service. For example, the Commission recently received a complaint about an automobile roadside service club that is billing for memberships on consumers' telephone bills. As this and many other examples show, the LECs now make their billing and collection system available to a myriad of providers of varied products and services.

The telephone billing and collection system has become a new alternative to more conventional billing and collection systems, such as credit cards and checks. This innovation may benefit consumers. As technological convergence progresses, consumers may find it increasingly convenient to be billed on their telephone bills for more and more services other than telephone carriage -- Internet, cable, and other as yet unknown services. However, recent experience shows that abuse of the newly-available access to the LEC billing and collection system is also causing consumer harm.

B. The Potential for Consumer Injury

It is not an exaggeration to say that any party capable of capturing a consumer's telephone number can cause charges for a product or service to be included on that consumer's phone bill. Any party with Automatic Number Identification (ANI), a system similar to "caller ID," can capture the phone number from which a call to the party originates. Thus, the only thing needed by scammers that have ANI is a method to induce consumers to call them. They need not induce consumers to divulge credit card or other account numbers in order to effectuate billing. Similarly, telephone numbers can be obtained without ANI or other such high-tech equipment, through purported sweepstakes that require a phone number on an entry form, or even through simply drawing numbers at random from the telephone directory. It is not possible for a telephone line subscriber -- the "owner" of the telephone line -- to block telephone number capture through ANI on calls that they themselves or others place from their phones, and it is not possible for line subscribers to prevent others from access to their telephone numbers. Thus, using a telephone number as a basis for billing of products and services is problematic, because

the person placing a call or otherwise providing a telephone number may not be the line subscriber, that is, the person legally empowered to authorize charges to that number.

LEC billing for vendors has created the opportunity for abuse, and has revealed that the telephone billing and collection system has not developed the mechanisms for risk assessment and fraud prevention that characterize other billing and collection systems. The bankcard billing and collection system, for example, has a number of such mechanisms. The most obvious is that the bankcard billing and collection system uses, as a basis for billing charges, a physical card with a unique account number assigned to each individual cardholder that, unlike a telephone number, is not widely available to the public. To obtain a merchant account, and thereby receive payment by credit card, a merchant must meet the bankcard network's established financial and other criteria, which may include an on-site visit by representatives of the system to ensure that the merchant account applicant is a legitimate business, selling what it claims to sell, and providing customer service after the sale.

In addition, the bankcard billing and collection system has developed the means for early identification of merchant accounts that exceed certain minimal levels of chargebacks, thereby preventing continued use of the system by merchants that may be employing fraud and deception to make their sales. The system also has rules to prevent fraudulent access to the system through laundering of credit card charges through a merchant account by persons other than those authorized by the financial institution to use the account.

.

In addition, there are a number of statutory protections for consumers using bankcards and other credit cards. The Truth in Lending Act⁴ requires prompt written acknowledgment of consumer billing complaints and investigation of billing errors by creditors, prohibits creditors from taking actions that adversely affect the consumer's credit standing until an investigation is completed, and limits a cardholder's liability for unauthorized charges to \$50. These protections greatly enhance the safety and reliability of the bankcard billing and collection system, and foster consumer confidence in using it.

The unique origin and history of the telephone billing and collection system accounts for the failure of consumer safeguarding features to develop previously. Nonetheless, LECs must now attain the same level of consumer safety and reliability in serving multiple vendors achieved by other billing systems that have served multiple vendors since their inception.

C. Lessons from Our Experience with Pay-Per-Call Technology

The Commission's appreciation of the potential for both benefit and injury that may result from the new use of the monthly telephone bill as an alternative billing and collection system dates from its experience in the 1980's with pay-per-call (900-number) technology. The advent of pay-per-call marked the beginning of the use of the telephone billing and collection system as a means for consumers to pay for products or services other than telephone transmissions -- namely, audio information or entertainment programs. Moreover, the introduction of this technology meant that for the first time a consumer could make a purchase of these products or services *merely by dialing a telephone number*. No exchange of paperwork,

⁴ 15 U.S.C. §§ 1601-1667f (as amended).

and not even the oral communication of a credit card account number, was required to complete a transaction. With pay-per-call technology, anyone with a telephone -- and nearly every U.S. household now has a telephone -- was suddenly able to make an instantaneous purchase of information or entertainment merely by calling a telephone number.⁵ Of course, even though offered *over* the telephone, and charged to the consumer through his or her monthly telephone bill, these information or entertainment services are not telephone service; *i.e.*, they are not a transmission or transport of communications without regard to content. To the contrary, with these information or entertainment services, the content itself is what is being sold.

Unfortunately, pay-per-call technology and the convenience to the consumer this technological advance affords also presented tempting opportunities to those who sought to exploit technology to defraud consumers. Indeed, shortly after the introduction of 900 numbers, the technology was commandeered by unscrupulous operators who used it to deceive and defraud consumers. Unlike other scams involving the telephone, the 900-number scammer did not face the task of persuading the consumer to divulge his or her credit card account number to an unknown entity. Scams using 900 numbers needed only to convince consumers to make the call. Once the call was placed, the consumer was billed for the alleged service or information and often had no means to contest the charge. The unwitting victim incurred charges -- often exorbitant charges -- not for transmission of the call (as would be the case in a conventional call), but for information or entertainment, *just by completing a 900-number telephone call*. In many cases, consumers never received the promised information or service.

⁵ Pay-per-call was the first, and remains the only, interactive consumer telecommunications technology available on a nearly universal basis.

The Commission responded to the abuse of pay-per-call technology with aggressive case-by-case law enforcement.⁶ This approach, however, was insufficient to prompt the pay-per-call industry to adopt appropriate self-regulatory measures, and the abusive practices continued. As a result, Congress ultimately enacted the Telephone Disclosure and Dispute Resolution Act of 1992⁷ ("TDDRA"), which directed both the FTC and the Federal Communications Commission ("FCC") to issue regulations governing the pay-per-call industry. The Commission adopted the Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("900-Number Rule" or "Rule"), 16 C.F.R. Part 308, on August 9, 1993.⁸ Since the TDDRA regulatory scheme was put in place there has been a significant reduction in complaints regarding 900 numbers.

Our experience to date suggests that the pattern observed with pay-per-call technology may be repeating itself in a broader way, with vendors, not just of information and entertainment services, but a host of other services as well. In the short period since cramming first emerged,

⁶ See, e.g., *FTC v. Transworld Courier Services, Inc.*, C.S. No. 1:90-CV-1635-JOF (N.D. Ga. 1991); *FTC v. Starlink, Inc.*, 1992-1 Trade Cases ¶ 69,715 (E.D. Pa. 1992); *FTC v. First Capital Financial, Inc.*, C.A. No. HAR-90-2007 (D. Md. 1992); *FTC v. Interactive Communications Technology, Inc.*, C.A. No. CV F 91018 REC (E.D. Cal. 1992); *FTC v. M.D.M. Interests, Inc.*, C.A. No. H-92-0485 (S.D. Tex. 1992); *FTC v. National Credit Savers, C.A. No. 91-A-1218-S* (M.D. Ala. 1992); *FTC v. U.S. Sales Corp.*, 785 F.Supp. 737 (N.D. Ill. 1992); *Phone Programs, Inc.*, 115 F.T.C. 977 (1992); *Teleline, Inc.*, 114 F.T.C. 399 (1991); *Audio Communications, Inc.*, 114 F.T.C. 414 (1991).

⁷ Pub. L. No. 102-556, 106 Stat. 4181 (1992) (codified at 15 U.S.C. § 5701 *et seq.* and 47 U.S.C. § 228).

⁸ 58 Fed. Reg. 42,400 (August 9, 1993). The FCC, likewise, as directed by TDDRA, adopted regulations governing the role of common carriers in the 900-number industry. 58 Fed. Reg. 44,773 (August 25, 1993); codified at 47 C.F.R. §§ 64.1505 - 64.1515.

complaints about unauthorized charges on consumers' phone bills have climbed to the number five spot among the categories that generate the most complaints received by the Commission's Consumer Response Center.⁹ If unchecked, abuse of access to the telephone billing and collection system by vendors of all sorts of services will likely inflict the same sort of consumer injury as occurred with pay-per-call services before the enactment of TDDRA and promulgation of the FTC and FCC rules that now tightly regulate pay-per-call technology.

In fact, in the Telecommunications Act of 1996,¹⁰ Congress granted the Commission broad authority to expand coverage under the 900-Number Rule. The Commission has initiated a rulemaking proceeding to determine how to fulfill the congressional mandate of the Telecommunications Act.¹¹ The staff of the Commission currently is reviewing the comments and other record evidence amassed to date, including what we have learned about cramming. Once this review has been completed, the Commission will decide how the Rule should be modified, both under existing authority of TDDRA and new authority of the 1996 Act, to reach services not currently covered that are "susceptible to the unfair and deceptive practices" that prompted Congress to enact TDDRA.¹² If amended to encompass cramming, the 900-Number Rule will add to the FTC's arsenal against that practice, enabling the Commission to obtain civil

⁹ As explained in more detail, *infra*, at 11, the Consumer Response Center is a unit created within the Commission staff to interface with the public. Each inquiry or complaint received by the Center is handled by a trained consumer counselor who not only provides the consumer with helpful information, but also gleans information from consumers that is entered into the Commission's law enforcement database.

¹⁰ Pub. L. No. 104-104, Sec. 701, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 228).

¹¹ 62 Fed. Reg. 11,749 (1997).

¹² Pub. L. 104-104, Sec. 701, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 228).

penalties of up to \$11,000 per violation. In the meantime, the Commission is aggressively pursuing law enforcement actions against cramming under its existing authority under the FTC Act.

III. The FTC's Approach to Cramming

The Commission employs a threefold approach to consumer abuses like cramming. First, the Commission has a mechanism to spot such emerging consumer abuses through systematic collection and analysis of consumer complaint data. Second, using the intelligence afforded by complaint collection and analysis, the Commission identifies appropriate targets for law enforcement action, and files federal district court actions across the country. Through these actions, the Commission seeks and obtains temporary restraining orders, preliminary injunctions, permanent injunctions and other equitable relief, such as asset freezes and appointment of receivers, to halt the targeted unfair or deceptive practices and to preserve assets for consumer redress. Finally, these law enforcement efforts are complemented by consumer education. In all aspects of this strategy, but particularly in the Commission's consumer and business education efforts, we have sought to form new partnerships with private industry and other government agencies.

A. Spotting Trends and Identifying Targets

The Commission's Consumer Response Center (CRC) receives about 3,700 consumer calls, letters, and e-mails per week. As this information is received, it is added to the FTC's database, which currently contains over 190,000 entries. The database enables staff to spot trends, identify companies that should be targeted for enforcement action, and find witnesses to provide evidence to support such actions. To maximize the effectiveness of this database, the

Commission sponsors and operates Consumer Sentinel, a secure Internet website available to law enforcement agencies throughout the United States and Canada through which the complaint database can be accessed. The database includes not only consumer complaints received directly by the Commission's Consumer Response Center, but also those submitted by a large number of United States and Canadian law enforcement agencies, as well as private data contributors such as the National Fraud Information Center and the American Association of Retired Persons. Consumer Sentinel is a joint project of the FTC and the National Association of Attorneys General, in cooperation with Canadian partners Canshare and PhoneBusters.

The cramming cases filed to date, described below, as well as a number of ongoing, nonpublic cramming investigations originated with information drawn from the Commission's database.

B. Targeted Law Enforcement Actions

The Commission uses the information from its complaint monitoring and analysis to direct and support targeted law enforcement actions. Earlier this month, the Commission initiated two law enforcement actions attacking cramming.¹³ One of these is *FTC v. International Telemedia Associates, Inc.*¹⁴ This case targets a so-called "billing aggregator" and a vendor of audio entertainment. Billing aggregators open the gate to the telephone billing and

¹³ The Commission's first action in this general area, *FTC v. Interactive Audiotext Services, Inc.*, was filed April 22, 1998. The defendant in that case allegedly sent look-alike telephone bills to owners of telephone lines for audio entertainment services they had not purchased or received. The defendants stipulated to a preliminary injunction that was entered by the federal district court for the central district of California on June 17, 1998. Press releases describing this case are appended to this statement as Attachments A and B.

¹⁴ No. 1: 98-CV-1935 (N.D. Ga. filed July 10, 1998).

collection system for vendors, some of whom seek only to use this novel system for fraudulent purposes. Billing aggregators act as intermediaries between vendors of various services and the LECs.¹⁵ In this case, the defendant billing aggregator is International Telemedia Associates, Inc. ("ITA"), and its client vendor -- also a defendant -- is Online Consulting Group, Inc. ("Online"). The court granted the Commission's *ex parte* motion for a temporary restraining order against both ITA and Online, and an asset freeze and appointment of a temporary receiver against Online.

Online allegedly advertised "free matching" services with "local singles" in newspapers throughout the country, urging consumers to call a toll-free number. When Online received a call to its toll-free number, it asked the caller where he was calling from and what sort of person he wanted to meet, told him that Online would have a "local single" return the call, and then hung up. Shortly thereafter, the consumer began receiving return calls from purported "local singles." Online did not adequately disclose in the first call, or during any of the return calls, that there was a charge or the amount of the charge. Nevertheless, when the consumer later received his telephone bill, he was shocked to find exorbitant charges -- described as collect or direct calls from a number in Deerfield Beach, Florida -- billed to his telephone number at the rate of about \$4 per minute. Many consumers were charged hundreds of dollars on their phone bills for Online's audio entertainment service delivered through return calls.

¹⁵ Billing aggregators processes their client-vendors' billing data into the electronic format required by the LEC, and act as conduits to the vendor for revenues collected by the LECs from consumers for the vendors' services.

ITA, the “billing aggregator,” allegedly played a key role to enable Online to spring this unpleasant surprise on the consumer. ITA received from Online billing information that Online generated when consumers called Online’s toll-free numbers. ITA then forwarded this billing data to the LECs to be included on consumers’ phone bills. Online used ANI equipment to generate this billing data. ANI technology identifies the *telephone number* from which the call originates, but cannot identify the *caller*, and cannot determine whether a caller is the line subscriber for the line from which the call originates. Because of the shortcomings of ANI as a basis for billing, in numerous instances, ITA caused line subscribers to be charged on their phone bills for Online services ordered and received by someone else who had used their telephone, but who did not have authorization to incur charges for those services. Legally, this is as indefensible as it would be for any other retailer to bill a line subscriber for goods or services delivered to some other caller’s house, simply because that caller used the line subscriber’s telephone to place the order for the goods or services.

According to the Commission’s complaint, ITA not only took care of billing for Online, and forwarded to Online consumer payments collected by the LECs, it also handled complaints about charges for Online’s services. ITA’s name and toll-free number for billing inquiries appeared prominently on the ITA page of the consumer’s telephone bill. Many consumers allegedly had difficulty in reaching ITA, and once they succeeded in doing so, found ITA not very responsive. Allegedly, ITA had the contractual authority to forgive Online charges, but often told consumers that only Online could make that decision.

The complaint alleges a number of specific deceptive or unfair practices that violate Section 5 of the FTC Act. First, the complaint alleges that Online falsely represented that its

matching service was free, and that it failed to disclose material information about the cost of its audio entertainment services. Second, the complaint alleges that both Online and ITA falsely represented that a line subscriber to a telephone line is legally obligated to pay for audio entertainment services, simply because his telephone was used to call Online's toll-free number. Third, the complaint alleges that both Online and ITA unfairly billed consumers for unauthorized charges. It is an unfair act or practice to bill and collect charges from line subscribers who have not accessed or purchased Online's audio entertainment service and who cannot reasonably avoid these billing and collection efforts because Online's service is accessible through unblockable 800 numbers and is delivered through unblockable return calls. Finally, the complaint alleges that Online violates the Commission's 900-Number Rule by using toll free numbers in a manner that results in the calling party being called back collect for the provision of audio information or simultaneous voice conversation services.

The Commission filed a second lawsuit that targeted cramming this month against another billing aggregator and vendor. The case is *FTC v. Hold Billing Services, Ltd.*¹⁶ Hold Billing Services, Ltd. ("Hold") is a billing aggregator that served, among other clients, Veterans of America Association, Inc. ("VOAA"), a service vendor. VOAA, also a defendant in this action, allegedly induced consumers unwittingly to enter a purported sweepstakes, without adequately disclosing that it construes each completed entry form as an authorization to bill a package of services to the telephone number filled in on the form. Hold allegedly processed the billing data VOAA drew from submitted sweepstakes entry forms into the electronic format

¹⁶ No. SA-98-CA-0629 FB (W.D. Tex. filed July 15, 1998).

required by the LECs, and forwarded this information to the LECs so that charges for VOAA's package of services could be inserted into line subscribers' telephone bills. Hold also allegedly acted as a conduit to VOAA for revenues collected from consumers by the LECs for VOAA's services. The complaint against Hold and VOAA alleges three violations of Section 5: first, that VOAA fails to disclose, in a manner likely to be noticed and understood by consumers, the material fact that VOAA construes sweepstakes entries as authorization to charge consumers for its services; second, that in connection with their billing and collection activities, VOAA and Hold falsely represent that consumers who did not purchase VOAA's services are legally obligated to pay for them merely because the consumers' phone numbers appeared on entry forms; and third, that VOAA and Hold unfairly bill line subscribers for services on their telephone bills solely on the basis of sweepstakes entry forms submitted by third parties, about whom the line subscribers have no knowledge, or who were not authorized by the line subscriber to incur charges.

Unfortunately, the pattern of alleged unlawful conduct targeted in these two cases is by no means unique. The staff of the Commission currently is investigating a number of other billing aggregators and service vendors. Like ITA and Hold, these billing aggregators provide an access point to the telephone billing and collection system for vendors of a multiplicity of services. Some of these vendors are unscrupulous, and employ a variety of ruses to capture consumers' telephone numbers to use for billing charges on their phone bills. For example, some of these vendors use deceptive ads to entice consumers to call a toll-free number, capture callers' phone numbers through ANI, and then, through a billing aggregator, bill recurring monthly

charges to consumers' phone bills for "travel club" or "psychic club" memberships. Often the charges are disguised as some other telephone service.

C. Limitations on Enforcement

As mentioned earlier, the common carrier exemption from the Commission's jurisdiction, enacted in 1938, is creating unintended complications for our law enforcement efforts in today's technologically advanced and deregulated telecommunications industry. The Commission is aware of service vendors who falsely claim to be exempt from FTC jurisdiction as common carriers,¹⁷ even when they are selling entertainment or other services over the telephone.¹⁸ These vendors, some of whom may have filed tariffs with the FCC, purport to sell services that arguably may be "basic telecommunications services," as that term is used in Federal Communications Commission (FCC) regulations to determine what kinds of activities characterize common carriers within the scope of that agency's enabling legislation.¹⁹ The FTC believes that merely selling what is arguably a "basic telecommunications service" or merely filing a tariff cannot shield these vendors from FTC enforcement action attacking unfair or

¹⁷ See, *supra*, at 2; note 3.

¹⁸ The common carrier exemption to FTC jurisdiction is generally not a problem with respect to billing aggregators, such as ITA and Hold, because there is no credible argument that the billing and collection for third parties entails the provision of the basic telecommunications service that characterizes a common carrier. The staff of the FTC have consulted with the staff of the FCC, who agree with our assessment that billing aggregators, acting as the billing and collection arm of vendors, are not common carriers subject to FCC jurisdiction.

¹⁹ Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer II"), Tentative Decision and Further Notice of Inquiry and Rulemaking, 77 FCC 2d 384 (1980), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

deceptive commercial practices they engage in with respect to non-common carrier activities.

See 15 U.S.C. § 45(a)(2). The Commission has taken the position that the statutory common carrier exemption to the FTC Act does not shield the non-common carrier activities of an entity that may otherwise engage in some common carrier activities under another statute.

Massachusetts Furniture & Piano Movers Ass'n, 102 F.T.C. 1176, 1213, n.7 (1983); *but see FTC v. Miller*, 549 F.2d 452 (7th Cir. 1977). This position is consistent with the courts' long-standing interpretation of "common carrier" under the Communications Act. See *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (definition is activities-based, not status-based). Moreover, in some instances, staff believes that these vendors are sham common carriers that do not have the capacity to provide the basic telecommunications services they purport to sell.

IV. Consumer Education

The third component of the Commission's efforts to address cramming is consumer education. In response to a sudden influx of consumer complaints about cramming in the early part of 1998, the Commission's staff rapidly developed a brochure for consumers entitled, "Cramming: Mystery Phone Charges." This brochure is part of a larger effort by the Commission to work both on its own and as a partner with private industry and others to educate consumers on emerging issues in the rapidly changing telecommunications market.

The staff of the Commission sponsored a public workshop on March 18, 1997, in response to mounting evidence of consumer confusion about the bewildering array of telecommunication choices exploding on the market. The conference addressed how to empower

consumers to make informed decisions about new products, services and billing methods. Workshop participants included representatives from the LECs, the long distance carriers, consumer groups, industry coalitions, and officials from the FCC, the National Association of Attorneys General and other interested executive branch agencies.

A general consensus emerged that consumers were already confused by current telephone-related advertising, marketing, and billing practices, and that this confusion is likely to get worse as competition for local exchange markets intensifies and new players offering new services enter the telecommunications market. A telecommunications working group was formed to develop consumer education publications to combat this confusion. The Commission hosted the first meeting of the telecommunications consumer education working group on April 24, 1997.

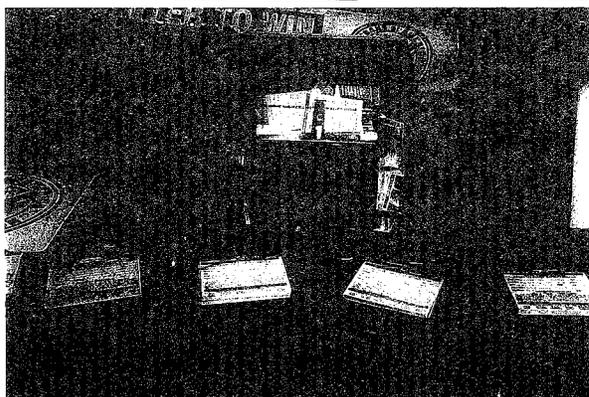
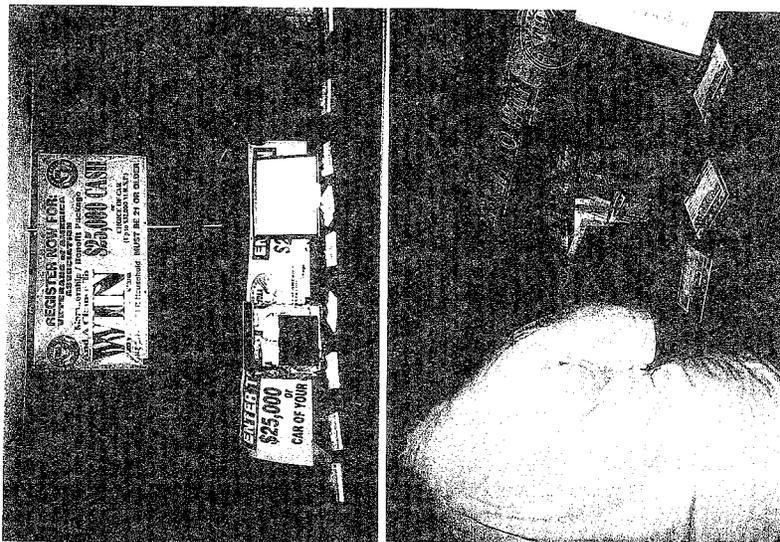
The first publication developed by the working group, "It's Your Call: Shopping in the New Telecommunications Marketplace" was released in January 1997. This brochure describes the various services and charges that commonly arise in the purchase of telephone services and guides consumers through the process of comparison-shopping for telephone services. The cramming brochure described above was the second result of these efforts.

V. Conclusion

In conclusion, the Commission recognizes that the practice of cramming is causing significant harm to American consumers. The Commission has used and will continue to use the full range of investigative techniques, targeted law enforcement actions, and consumer education to attack this growing problem. I appreciate the opportunity to provide testimony today on the Commission's efforts against cramming, and I would be pleased to answer any questions.

Description of Exhibits

- A. Photographs showing how Veterans of America Association (VOAA) prize promotion was conducted.
- B. Diagram of relationships of parties in *FTC v. Hold Billing et al.*
- C. VOAA membership/entry form for prize promotion, front.
- D. VOAA membership/entry form for prize promotion, back.
- E. Sample Hold Billing Service page from a line subscriber's telephone bill.
- F. Diagram of relationships of parties in *FTC v. International Telemedia Associates, Inc., et al.*
- G. Sample advertisements of Online Consulting Group, Inc.
- H. Sample International Telemedia Associates, Inc., page from a line subscriber's telephone bill.

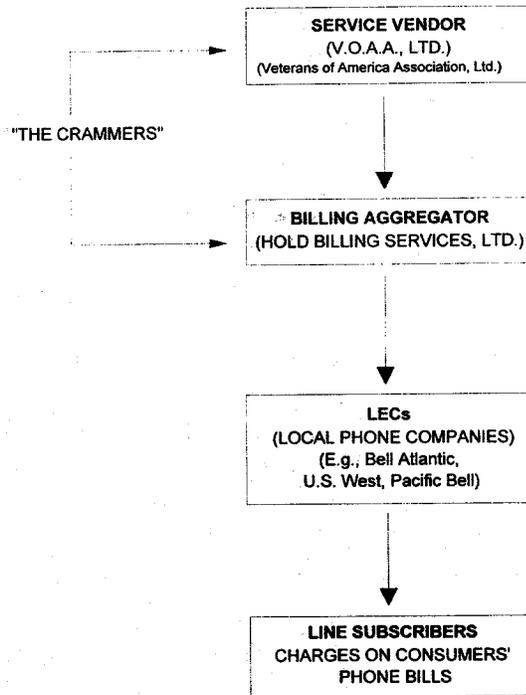


A
Photographs showing how
Veterans of America Association
(VOAA) prize promotion was
conducted.

**CRACKING THE CODE:
HOW CHARGES GET "CRAMMED"
ON CONSUMERS' PHONE BILLS**

FTC v. Hold Billing Services, Ltd.

**(SWEEPSTAKES PROMOTIONS
AT MALLS AND FAIRS)**



B
Diagram of relationships of
parties in *FTC v. Hold Billing*

OFFICIAL VOAA MEMBERSHIP APPLICATION
Veterans Of America Association
ONLY ONE PER HOUSEHOLD - MUST BE 21 YEARS OF AGE

Name: (Print: _____ Age: _____
Address: _____ Apt # _____
City: _____ State: _____ Zip: _____
Home Phone: (_____) _____
Signature: _____ Date _____

AREA CODE

(Must be signed and fully completed to qualify)

I am a: Veteran Veteran Supporter

The VOAA was founded as a national service organization to meet the needs of veterans and veteran supporters through advocacy, support, offering members preferred pricing for goods and services and donating to the American Veterans Foundation. By signing the above application form, I am agreeing to membership in the VOAA. I further attest that I have read, understand and agree to all the terms, conditions & charges listed on reverse side. 100% satisfaction guaranteed

YOUR LONG DISTANCE CARRIER WILL NOT BE CHANGED

VOAA Members Receive Great Benefits and Savings

Travel Insurance Dining Telecom Real-Estate More
Hotels Annuities Credit Card Savings Mortgages Savings

C
VOAA membership/entry form
for prize promotion, front

VOAA Membership Program

3 Year Membership Package billed for 1st 11 months on your local telephone bill.

3 YEAR MEMBERSHIP PACKAGE INCLUDES:

American Veterans Foundation funded by VOAA donates 90% of every dollar to veterans issues and causes.

Membership 3 years	\$30.00 Value
American Veteran Magazine 18 issues	\$53.10 Value
Discount Calling Card with Voice Mail	\$180.00 Value
Grocery Discounts \$500.00 manufacturers coupons*	\$500.00 Value
Reduced cost Medical Service Discount Card**	\$50.00 Value
\$5000.00 Medical Line of Credit***	
Transmedia Dining Card Free For VOAA Members	\$50.00 Value
	Total Retail
	\$863.10 Value

Access to the VOAA Network of cost savings for goods and services

10% to 50% Discounts for Insurance Real-estate Travel Telephone & more

** Retail Cost. \$99.95 VOAA Package Price \$48.95

*** Qualifications: Min. 21 Years of Age, USA Resident, Valid Social Security No., Some Form of Income

* Shipping and handling charge \$5.00

I understand that I will be entitled to 3 year membership with access to VOAA Voice Mail and I will be billed \$4.85 a month for the first 11 months plus a one time activation fee of \$4.85. I understand that I am the only person legally responsible for payment of the charges incurred in connection with the service(s) requested above and I hereby agree to pay charges when due. I further understand that the charges for the services will be billed by my local telephone company. 100% satisfaction guaranteed and I understand that I may cancel at any time by calling 1-800-981-7337

D
VOAA membership/entry form
for prize promotion, back



TELEPHONE NUMBER 941 Customer ID 970529

PAGE 11 OF 14

BILL DATE September 25, 1997

*HOLD billing
inquiries call
1 800 879-4653*

LONG DISTANCE CALLS (continued)

Billing for HOLD Billing Service **HOLD**

HOLD Billing Service Non-Regulated Service

Billing for V.O.A.A

Non-Regulated Calls

Miscellaneous Charges and Credits

Date	Description	Amount
Charges and Credits for 941 956-		
1 Sep 14	Voice Mail Service	\$ 4.85
2 Sep 14	Activation	4.85
Total		\$ 9.70
HOLD Billing Service non-regulated service charges		\$ 9.70
Total long distance/HOLD Billing Service		\$ 9.70

T- 11

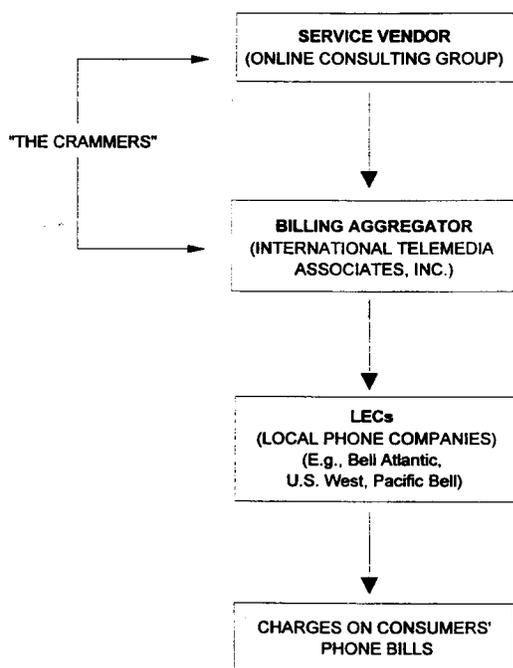
LS 2212 941956985 970529 04 01 FL210*HHRDA1 0001073 3F00020-0079

E
Sample Hold Billing Service
page from a line subscriber's
telephone bill

HOW CHARGES GET "CRAMMED" ON CONSUMERS' PHONE BILLS

FTC v. International Telemedia Associates, Inc.

**(TELEPHONE CALL-IN
DATING/MATCHING SERVICE)**



F
Diagram of relationships of
parties in *FTC v. International
Telemedia Associates, Inc.*

**Always Free
Always Live**
Call Now to Connect Live
with Local Singles looking
for someone just like you.
Try us with NO RISK.
1-800-986-3283
1-954-418-6000 #3301

**FREE
MATCHING**
Get Matched with the Local
Single of your choice for FREE.
The rest is up to you.
Call Now!
1-800-250-1700
1-954-418-6000 #3302

G
Sample advertisements of
Online Consulting Group, Inc.



Account Number 508 278-0038 908 006 4
 Bill Period Jul 29 - Aug 28, 1997
 ITA Page 1 of 1

R001
01569

This portion of your bill is provided as a contracted service to International Telemedia Assoc. International Telemedia Assoc. provides billing services for themselves or for carriers who offer toll calling or operator assisted telephone service which may originate from residential telephones or from general business telephones including hotels, hospitals, and pay telephones. Charges for these calls are determined by the carrier whose network is used at the time you place your call and are not set by NYNEX or International Telemedia Assoc.

Helpful Numbers Billing inquiries call International Telemedia Assoc. 1-800-866-8889

Summary		International Telemedia Assoc.	
1	Collect Calls		\$75.00
2	Federal Tax		2.25
3	State Tax		3.75
Total			\$81.00

Itemized Calls

Collect Calls Billed on behalf of ONLINE CONSULTING GROUP
 Directly Dialed

no.	date	time	received from	number	rate period	minutes	amount
4	8/16	9:40 pm	Deerfieldbech FL	954 421 1121	day	19:18	\$75.00
Sub-total of ONLINE CONSULTING GROUP							\$75.00
Total							\$75.00

H
 Sample International Telemedia
 Associates, Inc., page from a
 line subscriber's telephone bill

**TESTIMONY OF
ROY M. NEEL, PRESIDENT
AND CHIEF EXECUTIVE OFFICER
UNITED STATES TELEPHONE ASSOCIATION
BEFORE THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON GOVERNMENTAL AFFAIRS
THURSDAY, JULY 23, 1998**

Madam Chairwoman (Senator Collins) and members of the Subcommittee, I greatly appreciate your inviting me to testify before you today on the subject of *cramming*. Your hearing is certainly a timely one and it addresses one of the most significant consumer fraud problems that we in the local exchange carrier (LEC) industry face today.

One of the primary reasons that I was eager to be here today is because it is my membership of local telephone companies that sends out the overwhelming majority of the telephone bills that show up in the home or office. It was not that long ago, clearly within my vivid memory, that a person's telephone bill was a fairly simple document. It would show your charges for local telephone service and telephone equipment, because you received your telephone from the telephone company. The only other charge would be your itemized AT&T long distance bill. There was no slamming and no cramming under these circumstances. For the last three decades, however, telecommunications policymakers have sought to open up the

telecommunications market to competition. As a consequence, things appear on telephone bills today that could not have been envisioned even ten years ago. The LEC industry is constantly adapting to changes in the telecommunications marketplace never before contemplated.

Some have called this policy of introducing competition into the telecommunications marketplace "*deregulation*." I often read in newspapers and magazines and hear on television about how The Telecommunications Act of 1996 (the '96 Act) "*deregulated*" the telecommunications industry. These reports liken the '96 Act to legislation that deregulated airlines, trucking and railroads. Unfortunately, the '96 Act has not proven to be "*deregulatory*" for the LEC industry — my local exchange telephone companies remain pervasively regulated, both at the state and federal level. In fact, these companies have seen increased regulatory mandates as a result of the implementation of the '96 Act. To briefly illustrate, the FCC's orders implementing the interconnection and local competition provisions of the '96 Act run well over 1000 pages. Airline, trucking and railroad legislation provided for both competition *and* deregulation, whereas The Telecommunications Act of 1996 has provided, so far, only for competition without the corresponding deregulation.

That said, I would now like to address directly the questions you presented to me when you invited me to this hearing. Essentially, the cramming problem arises due to the fraudulent or misleading actions of some service providers who have chosen the telephone bill as a vehicle for this outrageous conduct. Local exchange carriers in this industry — where all aspects of the telecommunications and information industries are open to competition — bill

their local telephone service customers for services now provided by others. These other entities include not only long distance carriers, but also information and other service providers. They do this pursuant to contract. Problems, however, have fairly obviously arisen.

Cramming occurs when unauthorized, misleading or deceptive charges are placed on an end-user customers' telephone bill. Often times, the company names that appear on the telephone bills in connection with these unauthorized services make it sound as if these charges are from their local telephone company. This is a problem for the LEC industry because my membership wants to retain the telephone subscribers' trust so that these subscribers will continue to do business with us in a competitive marketplace. To do that, the telephone subscriber must be confident that his or her bill from the local telephone company is correct.

Toward this end, I'd like to make four important points that will be the focus of my discussion here:

1. While cramming is a serious problem, it results primarily from a small minority of bad actors. The majority of service providers conduct their businesses both ethically and lawfully. Although cramming is a relatively recent phenomenon, it has quickly arrived to the forefront among consumer frauds. Let me be up front in assuring you that the LEC industry is working overtime to "police" itself and eradicate those fraudulent, deceptive or otherwise bad actors. Even a very small percentage of cramming complaints is too many.

2. This self-policing effort — as seen in the Best Practices Guidelines that were released yesterday — is an important step toward ridding telephone bills of this scourge. It strikes an appropriate balance between what's needed to solve the problem and the needed flexibility to deal with cramming on a case specific basis. Quite simply, mandatory guidelines or a one-size-fits-all approach would erode that ability, thus thwarting an individual company's capacity to meet crammers head on, tackling the problem expeditiously and flexibly. Voluntary guidelines — if given an appropriate amount of time to work — benefit the consumer by allowing individual companies to effectively and responsibly accommodate legitimate transactions between telephone customers and service providers, while at the same time providing for an aggressive response to those service providers who cram customers.

3. Millions of consumers desire the convenience of having charges for services billed on their telephone bills. At this point in time, however, government should refrain from imposing new laws or regulations which would make it harder for the vast majority of honest service providers to give their customers this convenience.

4. And finally, the consumer must exert some responsibility of his or her own when dealing with telephone bills. Here, consumers must carefully read their bills; identify any questionable charges; and bring them to the prompt attention of his or

her service provider or local telephone company if necessary. Some of these same principles must also be applied to mailing pitches and other solicitations to which consumers may give their "OK." As the LEC industry works to better screen unscrupulous characters, this added diligence on the part of the customer will help ensure that unauthorized charges can be dealt with in a quick and proper manner.

Question 1 — What actions have local telephone companies taken to reduce the number of incidents of cramming?

A. Voluntary Company Action

Well before the recent interest in actions by government regulatory agencies with regard to cramming, the local telephone companies undertook unilateral action to deal with cramming complaints they have received from their customers. The actions taken by the companies have been varied. The following represents a few examples of the range of action our companies have taken to address this serious problem:

- Prompt identification and removal of offending entities
- Establishment of a process for contested charges
- Assessment of fees (monetary penalties) upon providers who have been found to have submitted charges that were not specifically authorized
- Adjustment of customers bills — no questions asked
- Inclusion within contracts (with service providers or clearinghouses) provisions that have "teeth," giving the telephone company strong contractual enforcement powers to deal with crammers

B. FCC Chairman Kennard's Anti-Cramming Initiative

On April 22, 1998, the Chairman of the Federal Communications Commission (FCC), William E. Kennard, wrote to me as President and CEO of the United States Telephone Association and two other important trade associations — ALTS and CompTel. Chairman Kennard also wrote to a group of the largest local exchange carriers (*e.g.*, Bell Atlantic, GTE). The purpose of those letters was so that we could *"come together with the Commission in an effort to prevent cramming and other practices that are harmful to consumers."* Chairman Kennard further indicated in his letter that the "Commission's staff is willing . . . to assist industry efforts to protect consumers from cramming and to provide a neutral forum in which carriers may discuss and *develop a voluntary code of conduct for billing on behalf of other businesses."*

On May 20, 1998, Chairman Kennard convened a LEC industry cramming workshop. At this workshop, Chairman Kennard observed what many of our own companies had already learned. First, cramming results in substantial harm to local telephone companies because the unauthorized, crammed charges appear on our telephone bills. Second, our companies incur significant costs due to the efforts expended investigating and resolving these consumer complaints.

After the May 20, 1998, workshop, the workshop participants held a series of meetings for the purpose of developing the voluntary code of best practices, as envisioned by Chairman Kennard. My members, willingly and dutifully, were full participants in these workshops. We worked not only inter- and intra-industry, but we also solicited feedback on our efforts

from consumer groups, consumer protection agencies, and other affected industry groups in the course of producing the final anti-cramming, best practices guidelines.

Question 2 — What is the status of the telecommunications industry efforts to establish voluntary guidelines?

I am pleased to report to you, Madam Chairwoman and the Subcommittee, that the industry efforts on the guidelines are completed. After having addressed input received from focus groups, along with hard-worked industry deliberation, we have produced a *voluntary code of best practices guidelines that can be used to attack the cramming problem* immediately.

Question 3 — What are some of the elements of the industry guidelines to control cramming?

1. Definition of Cramming

Most definitions of cramming, that I have seen previously, address only the issue of unauthorized charges — our guidelines, however, broaden this concept to include *“misleading or deceptive”* charges as well.

2. Screening

The guidelines encourage the use of a screening process that includes a review by the LEC of the marketing and promotional material to be used by any service provider whose charges will be included on the end user’s bill.

3. Sample Contract Provisions

The guidelines outline sample contract provisions for use by LECs in their agreements with both service providers and clearinghouses. Some important aspects of the contract provisions are:

- The LECs reserve the right to review and evaluate any previously approved (via *screening*) product or service
- The service provider may submit to the LEC for billing only LEC approved products and services
- Any pattern of persistent cramming will permit the LEC to immediately suspend billing

4. Process for Verification of Authorization Given by End Users

The guidelines provide that service providers may submit to the LEC *“only charges for products and services that are authorized by the end user.”* To ensure that the services or products are authorized, the guidelines specify that the service provider should document end user authorization through one of the following formats:

- Voice recording of the entire and actual conversation with the end user
- or
- A written and signed document
- or
- *Independent* third-party verification

5. End User Customer Dispute Resolution Process

Each LEC should establish a process to resolve customer complaints quickly and effectively, with bills displaying a toll free number for customers to place their complaints.

An important component to this process is consumer education as to their rights when they are crammed.

Questions 4 and 5: Are current laws and regulations sufficient to control cramming; What additional steps should the Congress, FCC and FTC take?

Madam Chairwoman, existing state and federal consumer protection laws and regulations — when combined with the best practices employed by the LECs and aggressive consumer education — would seem to address this problem. The LEC industry should be given the opportunity and the needed time to implement the guidelines that have been developed. I have a high degree of confidence that these voluntary guidelines will produce an effective means to curb this abuse. This industry has a powerful self-interest to correct this problem, and, as I mentioned before, we are working overtime to rid the industry of this scourge.

I would like to thank you for this opportunity to address this Subcommittee. Should you have any questions, I would be more than willing to answer your requests.

National Consumers League/National Fraud Information Center
Top Ten Telemarketing Frauds

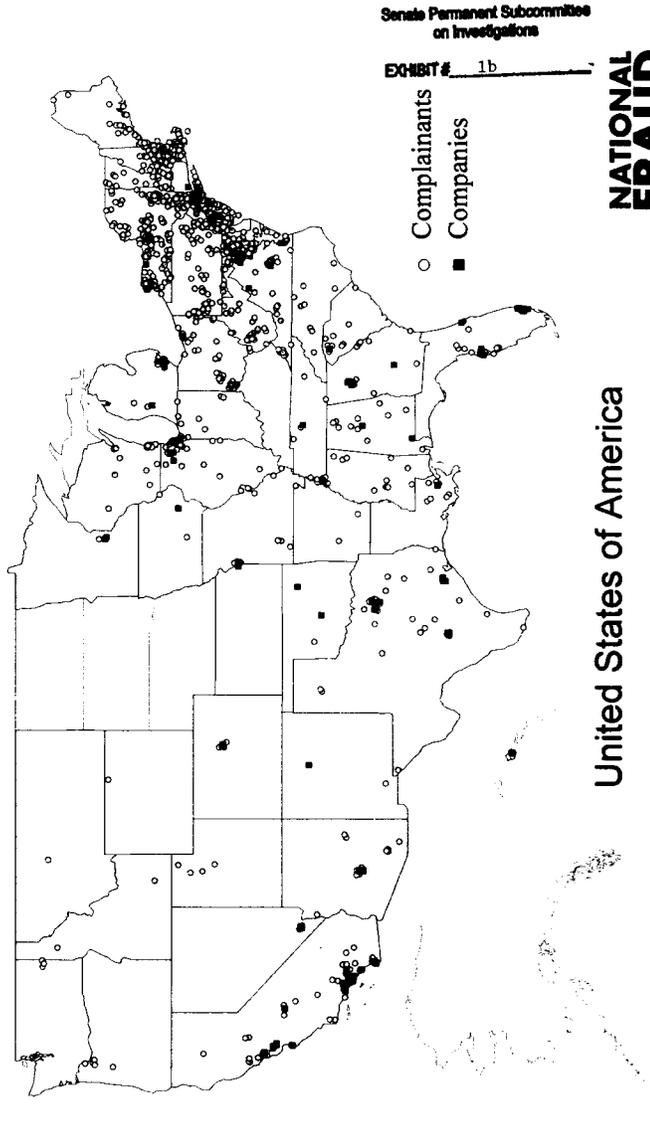
1997

1. Prize Offers
2. Advance-Fee Loans
3. Work-At-Home Plans
4. Pay-Per-Call
5. Slamming
6. Magazines
7. Credit Card Offers
8. Lotteries
9. Business Opportunities
10. Travel/Vacations

January - June 1998

1. Cramming
2. Advance-Fee Loans
3. Slamming
4. Prize Offers
5. Work-At-Home Plans
6. Magazines
7. Pay-Per-Call
8. Credit Card Offers
9. Lotteries
10. Business Opportunities

National Fraud Information Center Reports of Cramming: January - June, 1998



NOTE: One dot may represent more than one report in the same ZIP code.



773

SEP 1, 198

DETAILED CHARGES

For questions regarding AXCES, INC. charges, call 1 800 255-0554.

Page

IMPORTANT INFORMATION

This portion of your bill is provided as a service to the company identified above. There is no connection between Ameritech and this company.

CURRENT CHARGES

Miscellaneous Charges and Credits

This section of the bill reflects charges and/or credits applied to your account.

No.	Date	Description	
1	08-01	MONTHLY AXCES CHARGE	3.98
Total Miscellaneous Charges and Credits			3.98
<hr/>			
Taxes			
		Federal at 3%	.12
		Illinois at 5%	.20
TOTAL AXCES, INC. CURRENT CHARGES			4.30

INTN'L TELEMEDIA ASSOC

INTN'L TELEMEDIA ASSOC charges

April 1, 1988

EXHIBIT # 2b

This portion of your bill is provided as a billing service for INTERNATIONAL TELEMEDIA ASSOCIATES. INTERNATIONAL TELEMEDIA ASSOCIATES is a billing agent for long distance service providers. Toll charges are computed based upon the rate schedule of the long distance toll service provider whose name is printed above the call or group of calls shown below in the toll detail section of the bill.

Non-basic service charges

No.	Date	Time	Call type	Place	Number	Minutes	Cost T
Miscellaneous Charges							
			RCP COMM. GROUP				
			CALLING CARD				9.95
			CALLING CARD				9.95
			VIATECH				9.95
			CALLING CARD				Continued

INTN'L TELEMEDIA ASSOC

95Y

April 1, 1988

No.	Date	Time	Call type	Place	Number	Minutes	Cost T
			RCP COMM. GROUP				
			CALLING CARD				9.95
			VIATECH				
			CALLING CARD				9.95
			CALLING CARD				9.95
			RCP COMM. GROUP				
			CALLING CARD				9.95
			VIATECH				
			CALLING CARD				9.95
			RCP COMM. GROUP				
			CALLING CARD				9.95

T=Tax and or surcharge rate applied:

Federal tax.....	+2.69
State tax.....	+5.38
	Continued

Note: My April shows mine charges of \$9.95 each plus taxes for various different calling cards. None of these services were requested by my family or myself. The billing company is Intn'l Telemedia Assoc.

U S WEST COMMUNICATIONS ©

http://www.uswest.com

Bill Date: Jan 10, 1998

Account No:

Balance Forward	New Charges	Total Amount Due	Due Date / New Charge
\$.00	\$171.37	\$171.37	Jan 31, 1998

Account Summary

▼ Previous balance		
Charges		98.44
Payment	Thank you for your payment	98.44
Balance Forward		\$.00
▼ New Charges		
U S WEST Communications	1-800-244-1111	34.07
MCI Telecommunications	1-800-462-4663	85.63
NETWORK OPERATOR SERVICES	1-800-530-4898	41.72
INTEGRETEL INC	1-800-736-7500	9.95
Total New Charges		\$171.37
TOTAL AMOUNT DUE		\$171.37

For questions, call:

We appreciate your business.

Any amount left unpaid 30 days after bill date is subject to a 1.5% late payment charge.

The company you have chosen for interLATA calls (long distance calls outside your local toll calling area) is MCI Telecommunications.

The company you have chosen for intraLATA calls (long distance calls inside your local toll calling area) is MCI Telecommunications.

U S WEST Communications, PO Box 29060, Phoenix, AZ 85038-9060



Account No:
 For questions, call 1-800-736-7500

Page 8

THESE CHARGES ARE FOR NON TELECOMMUNICATIONS SERVICES AND PRODUCTS.
 NEITHER LOCAL NOR LONG DISTANCE SERVICES CAN BE DISCONNECTED FOR NONPAYMENT OF
 THESE CHARGES. SPECIALIZED SERVICES PROVIDERS MAY EMPLOY OTHER AGENCIES TO
 COLLECT DELINQUENT CHARGES, EVEN IF PREVIOUSLY ADJUSTED FROM YOUR BILL.

TTEMIZED CALLS

MISCELLANEOUS CHARGES AND CREDITS

NO.	DATE	ITEM	AMOUNT
		PAYLESS COMM	
1	DEC 12	DEBIT CARD	9.95
		SUBTOTAL	9.95
		INTEGRETEL, INC. SUBTOTAL OF SPEC SERV AND PROD	\$9.95
		INTEGRETEL, INC. CURRENT CHARGES	\$9.95

THIS PORTION OF YOUR BILL IS PROVIDED AS A SERVICE TO
 INTEGRETEL, INC. THERE IS NO CONNECTION BETWEEN
 INTEGRETEL, INC. AND U S WEST COMMUNICATIONS.

HOLD

773

OCT 1, 198

DETAILED CHARGES

Page

For questions regarding HOLD BILLING SERVICES charges,
call 1 800 879-4553

IMPORTANT INFORMATION

This portion of your bill is provided as a service to the company identified above. There is no connection between Ameritech and this company.

CURRENT CHARGES

Miscellaneous Charges and Credits

This section of the bill reflects charges and/or credits applied to your account.

No.	Date	Description	
CARD-COM			
1	09-08	MIN USE FEE	5.00
Total for CARD-COM			5.00
PANTEL COMMUNICATIONS			
2	09-11	MO SERV FEE	4.99
Total for PANTEL COMMUNICATIONS			4.89
Total Miscellaneous Charges and Credits			9.89

Local and State Additional Charges			
State Additional Charges01

Taxes			
Illinois at 5%50

TOTAL HOLD BILLING SERVICES CURRENT CHARGES 10.50



HOLD Billing Serv April 15, 1998

This portion of your bill is provided as a service to HOLD Billing Service. HOLD Billing Service is a billing agent for long distance providers. Toll charges are computed based on the rate schedule of the long distance toll service provider whose name is printed above the call or group of calls in the toll detail section of this bill.

Non-basic service charges

No.	Date	Time	Call type	Place	Number	Minutes	Cost
Miscellaneous Charges							
			T.S.C.I.				
			ACTIVATION				4.95
			MONTHLY FEE				4.95

T=Tax and or surcharge rate applied:

Continued



April 15, 1998

No.	Date	Time	Call type	Place	Number	Minutes	Cost
Non-basic service charges for							\$9.90
			Federal tax.....				+.30
			State tax.....				+.60
Total HOLD Billing Serv non-basic charges							\$10.80
Total for HOLD Billing Serv charges							\$10.80

If you have a question please call 1 800-879-4653.

Senate Permanent Subcommittee
On Investigations

TELEPHONE NUMBER _____ EXHIBIT # 2f

BILL DATE May 1, 1998

GTE

PAGE 9 OF 10

USP&C
Inquiries call
1-800-449-1054

LONG DISTANCE CALLS (continued)

Billing for USP&C **USPC**

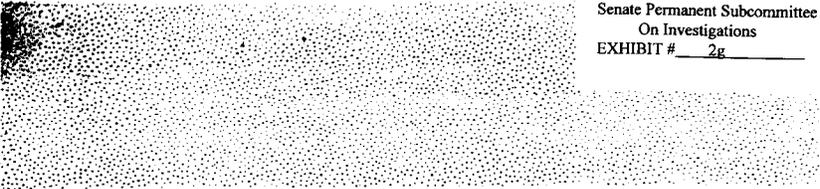
Billing for Privacy Card Svc

Miscellaneous Charges And Credits

Date	Description	Amount
Charges and Credits for _____		
1 Apr 4	Advantage Calling Card Program	\$ 4.95
Total		\$ 4.95
Taxes and Fees on USP&C Non-Basic Calls		
2	Federal excise tax (3.00% of \$4.95)	\$.15
3	State tax (6.00% of \$4.95)	.30
Total		\$.45
Total long distance/USP&C		\$ 5.40

To GTE:

I don't know what that
USPC scam is about.
I called them - they are
giving me the credit for
\$5.40 - I have deducted it
from my bill - J Tomney



USPC ~~XXXXXXXXXX~~ 836 25 Feb 19 1998

This portion of your bill is provided as a service for USP&C.
USP&C is a billing agent for long distance providers. Toll charges
are computed based upon the rate schedule of the long distance toll service
provider whose name is printed above the call or group of calls in the toll detail
section of this bill.

USPC ~~XXXXXXXXXX~~ 836 25 Feb 19 1998

Amount	Place	USP&C Charges Number	Date	Time	Rate	Min
		Miscellaneous Charges				
\$27.00	Call Manager					
\$27.00	Subtotal					
\$27.00	Subtotal USP&C Calls					
.81	Federal Tax					
\$27.81	Total USP&C					

Billing Questions 1 800 449-1000

*What the '---' is an
extensor system? Page*

Statement of Senator Thad Cochran
Hearing Of
Permanent Subcommittee on Investigations
"Cramming": An Emerging Telephone Billing Fraud
July 23, 1998

Mr. C. A. Hall is the owner of Majestic Metals, Inc., a sheet metal company in Jackson, Mississippi. In June of this year, Mr. Hall and his family were the victims of cramming on three separate phone lines, each bill contained vague and unexplained charges ranging from \$9.00 to \$25.00.

On his business telephone line, Mr. Hall received a charge of \$24.87 for "EAOP Mssging." The provider for this service was EAOP Services and the billing agent for this service was Integretel. Mr. Hall has no idea what this charge was actually for. He called the number for billing questions and was eventually told that EOAP stood for Employer's Online Assurance Program, however no person he spoke with could tell him what service was being provided. After significant prodding, Mr. Hall was able to learn only that EOAP was a company located in Houston, Texas.

On his daughter's telephone line in his home, Mr. Hall received a charge of \$11.90 for "Personal Plan." The provider for this service was Private Line Services and the billing agent was USP&C. Mr. Hall has no idea what this charge was for. He called the number for billing questions and no person he spoke to could tell him what service was being provided for the charge. Mr. Hall repeatedly asked for the physical address of the company and was refused.

On his mother's telephone line, there was a charge of \$9.90 for "Set Up Fee" and "Calling Card." The provider for this service was A.T. Access Card and the billing agent was Intl Telemedia Associates, Inc. Mr. Hall was told by the billing agent that the fee was for a calling card. He was informed that someone had signed a document agreeing to pay for this card. No calling card was ever received by Mr. Hall's mother and she does not recall ever agreeing to pay for such a card. The card was canceled and there have been no further charges, but Mr. Hall was told he had to pay the previous charges. When he asked for the address for the company providing the card, he was refused.

Mr. Hall has declined to pay for any of the above charges.

He contacted his local phone company, BellSouth, to discuss these unauthorized charges and he was generally treated well. The employees at BellSouth seemed very concerned and willing to help resolve the issue. They told Mr. Hall they are required by the FCC to provide these billing services.

On each of his bills, in tiny print at the bottom, there's a disclaimer that the billing agent is not affiliated with BellSouth. Mr. Hall tried repeatedly to get complete physical addresses for these

companies so he could file a complaint and report their actions to the appropriate government officials, but he was successful with only one of the three companies.

Mr. Hall thinks Congress needs examine why local phone companies provide billing services for other unrelated companies. As an example, Mr. hall discussed his sheet metal business. He bills his customers for services he alone provides, why would he take on billing for the local hardware store?

Mr. Hall is infuriated. He is upset that our laws permit unscrupulous companies to make millions of dollars through fraud and he is truly worried about consumers who don't watch their bills.

Attached are copies of Mr. Hall's three telephone bills.

#

IntegreTel, Inc. **

Account Number:
Bill Period Date: Jun 1, 1998



For IntegreTel, Inc. Billing Questions, Call 1 800 736-7500

Detailed Statement of Charges

<u>Miscellaneous Charges and Credits</u>	<u>Amount</u>
<u>Service Provider - EOAP SERVICES</u>	
1. ^{Date} 05/04 EOAP MSGGNG	24.87
Total Miscellaneous Charges and Credits	24.87
 <u>Taxes</u>	
2. Federal Tax75
Total Taxes75
<u>Total IntegreTel, Inc. Current Charges</u>	<u>25.62</u>

CHUCK GORDON

* EMPLOYERS ONLINE ASSURANCE PROGRAM
 4790 INDEPENDENCE
 HOUSTON, TX 77027

This portion of your bill is provided as a service to IntegreTel, Inc.
There is no connection between DallasSouth and IntegreTel, Inc.

AT E043229



Account Number:
Bill Period Date: Jul 1, 1998

For USP&C Billing Questions, Call 1 800 449-1053

Detailed Statement of Charges

<i>Miscellaneous Charges and Credits</i>		<u>Amount</u>
<i>Service Provider - PRIVATE LINE SERVICES</i>		
<i>Date</i>		
1. 05/27	Personal Plan	11.90
Total Miscellaneous Charges and Credits		11.90

<u>Taxes</u>		<u>Amount</u>
2. Federal Tax36
Total Taxes36

~~Total USP&C Current Charges to Bill on 2/26/98~~

This portion of your bill is provided as a service to USP&C.
There is no connection between BellSouth and USP&C.

AT E043211



Account Number:
Bill Period Date: Jun 22, 1998

For Intl Telmedia Associates Inc. Billing Questions, Call 1 800 866-8889

Detailed Statement of Charges

<u>Miscellaneous Charges and Credits</u>		<u>Amount</u>
<u>Service Provider - A. T. ACCESS CARD</u>		
<u>Date</u>		
1. 04/28	Set Up Fee	2.95
2. 04/28	Calling Card	6.95
Total Miscellaneous Charges and Credits		9.90
<u>Taxes</u>		<u>Amount</u>
3. Federal Tax30
Total Taxes30

~~Handwritten scribble~~

RECEIVED
JUN 25 1998
BY: _____

Handwritten note:
Mrs. said she did not get a Calling Card. I cancelled this

This portion of your bill is provided as a service to Intl Telmedia Associates Inc. There is no connection between BellSouth and Intl Telmedia Associates Inc.

AT E044335

**Senate Permanent Subcommittee
on Investigations**

EXHIBIT # 4

TRG
The Regis Group, Inc.
Management Consultants

To: Anti-Cramming Workshop Team
From: Marc P. Chinoy, The Regis Group, Inc.
Date: July 21, 1998
Re: Anti-Cramming Best Practices Guidelines

Attached please find the final version of the Anti-Cramming Best Practices Guidelines and a one-page Consumer Summary as developed by the Anti-Cramming Workshop, originally convened at the request of the FCC on April 22, 1998.

As requested by the workshop participants, these documents have also been forwarded to those attendees of the Focus Sessions who were identified to The Regis Group, Inc.

All of us at TRG have appreciated the opportunity to facilitate the deliberations of the Workshop

We wish all of you the very best and hope to have the opportunity to work with you in the future.

AGREED TO JULY 21, 1998

Anti-Cramming Best Practices Guidelines - "Consumer Summary"

- **Purpose:**
 - These voluntary LEC guidelines offer an array of Best Practices designed to prevent, deter, and eliminate cramming.

- **Definitions:**
 - **Cramming:** The submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on End-user Customers' local telephone bills.
 - **Local Exchange Carrier (LEC):** The local telephone company that renders the bill to the End-user Customer.
 - **Clearinghouse:** Billing and collection customers that aggregate billing for their Service Provider customers and submit that billing to the LEC.
 - **Service Provider:** The party that offers the product or service to the End-user Customer and directly or indirectly sends the billable charges/credits to the LEC, for billing to the End-user Customer.

- **The Best Practices Include:**
 - Bills should be comprehensible, complete and include information the consumer may need to discuss and, if necessary, dispute charges.
 - Consumers should be provided with options to control whether or not a third party's products and services are charged on their telephone bills.
 - Consumer authorization of services ordered should be appropriately verified.
 - The LECs should screen products, services and Service Providers prior to approval for inclusion on the telephone bill.
 - Clearinghouses should ensure that only charges that have been authorized by the End-user Customer will be billed.
 - The LECs should continue to educate consumers as to their rights and the process for resolution of disputes.
 - Each LEC should provide appropriate law enforcement, regulatory agencies, and other LECs with various categories of data to assist in controlling cramming.

July 21, 1998

ANTI-CRAMMING BEST PRACTICES GUIDELINES

Introduction

On April 22, 1998, William Kennard, Chairman of the Federal Communications Commission (FCC), invited a group of the largest local exchange carrier (LEC) providers of billing and collection services, along with representatives of USTA, ALTS, and CompTel, to participate in a workshop to develop a set of guidelines that represent best practices to combat the problem known as "cramming." Cramming refers to the submission or inclusion of unauthorized, misleading, or deceptive charges on consumers' local telephone bills. The billing relationship between the Service Providers and the LECs stems from the fact that many LECs bill their local telephone customers for some services provided by others such as long distance carriers and information service providers, pursuant to contracts and/or tariffs.

The cramming problem has increasingly been receiving a great deal of attention from federal and state legislators, regulatory agencies, and law enforcement agencies. In his April 22 letter to prospective workshop participants, Chairman Kennard expressed his strong concern over the rate at which consumers are experiencing cramming. In addition to the consumer harm caused by cramming, Chairman Kennard recognized the harm that cramming causes the LECs, both in the costs incurred by the LECs and the damage caused to the LECs' reputations with consumers. Chairman Kennard expressed the willingness of the FCC staff to assist the workshop in its efforts, and to provide a neutral forum for the workshop's activities. In his opening remarks at the initial workshop meeting on May 20, 1998, Chairman Kennard described cramming as a serious problem that is likely to become even more serious in the near future. He urged the workshop participants to come up with a way to handle this growing problem. FCC Commissioner Susan Ness also spoke to the workshop participants about the cramming problem.

At the May 20 meeting, the workshop participants were also addressed by Congressman Bart Gordon of Tennessee, who echoed the concerns of Chairman Kennard about the serious consumer problem represented by cramming. Congressman Gordon characterized cramming as the fastest growing consumer fraud, and one that affects the most vulnerable consumers.

The workshop participants uniformly concur with the views of Chairman Kennard and Congressman Gordon concerning cramming. The workshop participants are committed to seeking ways to eliminate cramming and prevent the substantial harm that cramming is causing to consumers. In addition, as pointed out by Chairman Kennard, the workshop participants recognize that cramming results in substantial harm to the LEC providers of billing services. Cramming causes the LECs to incur significant cost and effort to investigate and resolve the numerous individual consumer complaints. In addition, because many consumers view the LECs (rather than the Service Providers) as imposing these improper charges, cramming damages the LEC's reputation and hurts consumer confidence in the LEC.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

Various individual LECs have already developed and implemented a number of measures designed to remedy the cramming problem. Despite these efforts, however, the cramming problem has continued to grow. As recognized by the FCC in deciding to convene this workshop, a more elaborate, comprehensive effort that makes use of the collective experience and ideas of the participants is necessary in order to have a meaningful impact on cramming.

The guidelines set out below represent the culmination of the workshop's efforts to identify best practices designed to prevent, deter, and eliminate cramming. Although the guidelines were jointly developed by the workshop participants, the decision of whether, and to what extent, to implement any or all of these guidelines is an individual company decision to be made by each LEC unilaterally.

The cramming problem that led to the convening of this workshop stems from the submission of charges by third parties to LECs for inclusion on consumers' local telephone bills, and does not involve billing for services provided by the LECs. Thus, the guidelines are intended to deal solely with cramming by third parties. While the scope of these guidelines is third party billing on the LEC bill, the LECs affirm their responsibility to ensure that consumers are afforded basic billing rights for all billing on the local telephone bill, including the LEC's own. These consumer rights include:

- (1) a clear, concise description of services being billed,
- (2) full disclosure of all terms and conditions,
- (3) billing for authorized services only, and
- (4) prompt and courteous treatment of all disputed charges.

In addition, effective regulatory mechanisms are in place today to deal with any problems caused by the billing of products or services provided by the LECs.

There is no single cure for the cramming problem. These guidelines offer various methods for combating cramming. It is not expected that any LEC would need to implement all these best practices, or any particular best practice. Rather, it is expected that the maximum consumer benefit will result from each LEC choosing from among these best practices those that best suit its individual circumstances. Further, it is not intended that the identification of the best practices set out below would preclude the implementation of other practices reasonably calculated to address cramming problems.

If a LEC chooses to implement a particular best practice, it is expected that such practice will be implemented in an objective, fair, and equitable manner.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

Definitions of Commonly Used Terms

For purposes of these guidelines, the following definitions shall apply:

Billing and Collection Customer (B&C Customer): Any entity who submits billing information under contract to the LEC to be included on the End-user Customer's billing statement.

Clearinghouse: Billing and collection customers that aggregate billing for their Service Provider customers and submit that billing to the LEC.

Cramming: The submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on End-user Customers' local telephone bills.

End-user Customer: The party (i.e., the consumer) identified in the account records of a local exchange carrier issuing a telephone bill (or on whose behalf a telephone bill is issued), any other person identified in such records as authorized to change the services subscribed to or to charge services to the account, and any person contractually or otherwise lawfully authorized to represent such party.

End-user Customer Complaint: An oral or written communication between an End-user Customer and an authorized representative of a LEC where the customer identifies an unauthorized, deceptive or misleading charge, or charges.

Local Exchange Carrier (LEC): The local telephone company (this would include CLECs) that renders the bill to the End-user Customer.

Service Provider: The party that offers the product or service to the End-user Customer and directly or indirectly sends the billable charges/credits to the LEC, for billing to the End-user Customer.

SubCIC Entity (SubCIC): A Service Provider that is a customer of a Clearinghouse and has no direct (or contractual) relationship with the LEC.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

Best Practices Guidelines

The following best practices guidelines present options that can be considered for Billing and Collections processes, procedures and contracts.

I. Contract Provisions

A. Screening - Products and Service Providers

1. Products to be Billed - An appropriate practice for charges that are placed on the local telephone bill would be to include those approved charges that are related to telecommunications and information services and other services approved by the LEC.
2. Each LEC should consider establishing criteria to help Service Providers identify problematic programs. Some programs that have a history of problems include the following:
 - Programs advertised via "box" or sweepstakes/contest entry forms
 - Programs initiated via "assumptive sale" or "negative option" plans
3. Product Screening - For the purposes of identifying programs that may be deceptive or misleading or otherwise not in compliance with applicable LEC policies, the LEC should consider requiring a comprehensive product screening and text phrase review/approval process. Material submitted to a LEC should be reviewed by the LEC in a timely manner. The LEC should require the Service Provider to furnish various data, including but not limited to the following:
 - Suggested text phrase language for bill presentation
 - The name, date and issue number for any publication(s) in which the product or service will be advertised
 - Advertisement placement plans
 - Copy of actual advertisement (print advertisement, tape of radio or television advertisement, etc.)
 - Internet web page address where product or service will be advertised or where the End-user Customer may subscribe to the product or service
 - Detailed description of how the product is ordered, including any telemarketing scripts (if telemarketing is used)
 - Detailed description of how the product can be canceled
 - Detailed description of how the End-user Customer can generate questions, request adjustments, etc., including a description of how such requests will be accommodated
 - Copy of actual post sale fulfillment documentation

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

As part of the screening process, the LEC should consider determining that all promotional and marketing materials:

- clearly and accurately describe the services being purchased
 - clearly and conspicuously disclose all material terms and conditions of the offer, including without limitation,
 - the amount of the charge which will be billed to the End-user Customer's telephone bill
 - if the charge is a recurring charge, the frequency of billing and any minimum time interval for which the End-user Customer will be billed
 - clearly and conspicuously disclose that the charges will appear on the End-user Customer's telephone bill
 - do not contain any information which is false, misleading or deceptive
4. The LEC should consider developing a process to ensure that only pre-approved text phrases are applied to the End-user Customer's telephone bill. For example, the LEC could develop a process whereby text codes and a text code table/mechanized process are used to control the application of charges on the End-user Customer's telephone bill.
5. Service Provider - The LEC should consider developing an approval process for the addition of subCICs. The types of data to be supplied by the Clearinghouse may include, but are not limited to, the following:
- SubCIC Company Name
 - SubCIC Company Address
 - SubCIC Company Officer Names
 - State of Incorporation
 - Public Utility/Service Commission certification, as required
 - State registration for each state for which billing will be submitted
 - Information regarding whether the company, its affiliates and its principals or any company that its principals have been associated with have been subject to prior conviction for billing related or other consumer fraud, had access to billing services terminated or been denied access to billing services
 - Type of data to be billed
 - Estimated number of customers to be billed
 - Inquiry company name and address
 - Inquiry procedures
 - Names of other companies with whom they have a billing contract
 - Number of complaints and adjustments associated with other billing companies

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

B. Sample General Contract Provisions

The LEC should consider implementing the following general contract provisions:

1. The LEC has and maintains discretion for charges that appear on its local telephone bill.
2. The B&C agreement is between the LEC and the B&C Customer. In those instances where the B&C Customer is a Clearinghouse, the Clearinghouse is directly responsible for the actions of its customers (i.e., the subCICs).
3. The B&C customer, by signing the B&C contract, agrees to abide by the terms and conditions of the contract and the LEC's billing policies. If the B&C Customer is a Clearinghouse, it shall hold its customers equally responsible for upholding the terms and conditions of the contract.
4. The LEC reserves the right to modify its billing policies based upon regulatory agency rules, End-user Customer complaint levels, as well as any negative impact to the LEC's image or reputation.
5. Should the LEC billing policies change, a minimum of 30 days written notice shall be provided to each B&C Customer.
6. The LEC reserves the right to review and re-evaluate any previously approved product or service.
7. The Service Provider shall submit to the LEC billing records only for those products or services that have been approved by the LEC. If a request to bill for a product or service is rejected, the Service Provider may not send charges for said product or service to the LEC for billing (i.e., the rejected product or service must not be misrepresented as a different product or service).
8. The LEC reserves the right to terminate the B&C contract, either in its entirety or for an individual Service Provider's subCICs, if the Service Provider and/or the subCIC is found to be in breach of the contract.
9. The LEC reserves the right and authority to immediately suspend billing for Service Providers or programs whose billing generates customer complaints that indicate a pattern consistent with cramming.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

C. Service Level Thresholds

1. The LEC should consider establishing a complaint threshold to be applied at the Service Provider or subCIC level.
2. The LEC should consider establishing an adjustment threshold to be applied at the Service Provider or subCIC level.
3. "Inquiry Service" is an optional B&C service offered by the LECs for a fee that enables the LEC customer service representatives to discuss and resolve questions from End-user Customers about the B&C customer's service. Most B&C customers do not purchase the LEC Inquiry Service, choosing instead to offer customer service directly to their subscribers. For those B&C contracts that are without Inquiry Service, the LEC should consider establishing an End-user query threshold (based on an acceptable number of calls from End-user Customers into the LEC's customer contact centers regarding questions or issues on the specific Service Provider's charges).
4. In implementing the above mentioned thresholds, the LEC should consider including requirements for written notification to the billing and collection customer if a threshold is exceeded, a cure period (that could include suspension) for a specific period of time to allow the situation to be remedied, assessment of administrative charges and a contract termination provision.
 - a. The notification letter should document the acceptable threshold and that the specific threshold has been exceeded, and that appropriate administrative charges are applicable and will be assessed.
 - b. The notification letter should advise the billing and collections customer of the cure period length, start and end dates, and that the number of complaints, adjustments, or queries must be below the applicable threshold by the end date of the cure period.
 - c. The notification letter should advise the B&C Customer that if the above mentioned results are not obtained by the end of the cure period, the contract, either in its entirety or for specific subCICs, will be terminated.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

D. Administrative Charges

The LEC should consider imposing appropriate compensatory administrative charges when the above described service level threshold(s) (for complaints, adjustments or queries) are exceeded. There are a number of appropriate methods for calculating the dollar amount of any such charges. One possible methodology is as follows:

- The complaint, adjustment, or query threshold administrative charge could be calculated by the LEC on a P X Q (i.e., price multiplied by quantity) basis and could be assessed for each complaint, adjustment or query that exceeds the threshold.

In addition, the LEC should consider assessing an administrative charge when a charge for a product or a service not approved by the LEC is placed on the End-user Customer's bill.

In an effort to assist the Clearinghouses in their efforts to identify problematic subCICs, consideration should be given to computing and reporting these charges at the subCIC level.

E. Settlement Process Modification

The LEC should consider settlement process modifications, that could include the following:

1. Higher billing charges when thresholds are exceeded (e.g., a sliding scale based on threshold level).
2. A Purchase of Accounts Receivable (PAR) reserve account for post billing adjustments, based upon a percentage of billed revenue for each Service Provider who exceeds a predetermined level of adjustments.
3. A longer settlement cycle for Service Providers who submit primarily pay per call traffic or miscellaneous (i.e., EMI 42) charges.
4. A process to recourse adjustments for any non-deniable charges that are unpaid after being on the End-user Customer's telephone bill for a period of 90 days.

F. Clear Criteria for Clearinghouse Function

As mentioned above, Clearinghouses are billing and collection customers that aggregate billing for their subCIC customers and submit that billing to the LEC, on behalf of the subCIC(s). Experience has shown that many of the cramming problems have occurred on charges originating at the subCIC level. Therefore, to have a meaningful effect on cramming, the LEC should consider establishing criteria for Clearinghouse responsibilities, as follows:

1. The Clearinghouse should be responsible for activities performed by their subCIC customers.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

2. The Clearinghouse should ensure that the only charges that are submitted for each subCIC are those that have been approved for billing through the LEC's program approval process.
3. The Clearinghouse should provide adjustment reports for each of their subCICs to the LEC. The data to be provided on these reports should be, at a minimum, subCIC name and identification number, number of adjustments, adjusted revenue, number of accounts billed and revenue billed.
4. The Clearinghouse contract with their subCICs should ensure that the LEC has the right to audit the Service Provider and/or the subCIC data used to provide the above referenced reports. A copy of this contract provision should be provided to the LEC.

G. Confidentiality

The LEC should consider establishing procedures to preserve the confidentiality of proprietary information furnished to the LEC as part of the screening process. Such procedures should include limiting the use and disclosure of such information to the performance by the LEC of the product screening function and the provision of billing and collection services. In addition, the LECs should consider a contract provision to maintain the confidentiality of such proprietary information furnished to the LEC, to the extent consistent with legal or regulatory requirements. Information or data which is in the public domain or becomes available to the LEC from a source other than the service provider should not be considered proprietary or confidential.

H. Disclosure of End-user Customer Complaints and Aggregate Adjustment Data

The LEC should consider a contract provision that expressly permits the LEC to disclose the categories of data described in detail in item III below.

I. Other Contract Provisions

1. The LEC should consider a contract provision that requires each billing and collection customer to provide the LEC with requested information about their (or any Service Provider that is billing through that B&C customer) operating history related to cramming in other geographic areas.
2. The LEC should consider a contract provision that allows the LEC to reserve the right to impose additional controls, as deemed necessary, in order to address new forms of cramming.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

3. The LEC should consider a contract provision to indicate that the LEC has sole discretion to determine if due to cramming practices its reputation has been harmed. If the LEC determines its reputation has been harmed or may be harmed, the B&C contract may be terminated.
4. The LEC should consider a contract provision to allow the B&C contract to be terminated if it is determined that the Service Provider sold a product or service to the end-user while misrepresenting themselves as the LEC or an agent of the LEC.

II. Process for Authorization/Verification of End User Approval

It is recognized that both the LEC and the Service Provider have a direct relationship with the consumer, and therefore have a responsibility to ensure that no unauthorized non-message telephone service charges are assessed via the LEC bill. However, it is the Service Provider's responsibility to inform End-user Customers of rates, terms, and conditions of its services and to obtain and retain the necessary End-user Customer authorization and verification as set out below.

To ensure that End-user Customers are appropriately informed of Service Provider rates, terms and conditions, the LEC should consider obtaining assurance from the Service Provider that the following processes and conditions are met by the Service Provider for authorization and verification of a Service Provider non-message telephone service charge.

- A. A Service Provider should submit for billing on the End-user Customer's telephone bill only charges for products or services that are authorized by the End-user Customer and charges that are required by regulatory or governmental authority (such as the subscriber line charge and taxes).
- B. A Service Provider that is the End-user Customer's preselected provider of toll or local telephone service may submit other charges for customer-used or requested telecommunications-related products or services without additional documented authorization.
- C. Where the End-user Customer's authorization is to be obtained, it should be documented through one of the following formats:
 1. A voice recording of the entire and actual conversation with the End-user Customer.
 2. A written and signed document.
 3. Independent third party verification.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

- D. The documented authorization should contain, at a minimum, the information set out below. Information contained in any communications with consumers should be provided in a clear and conspicuous manner.
- Date
 - Name and telephone number of the End-user Customer
 - Question and answer to ensure that the End-user Customer is qualified to make the requested changes and to authorize billing
 - Question and answer regarding the End-user Customer's age, to ensure that authorization is provided by an of-age End-user Customer
 - Explanation of the product/service being offered
 - Explanation of all applicable charges
 - Explicit End-user Customer acknowledgment that said charges will be assessed via the telephone bill
 - Explanation of how a service or product can be canceled
 - Description of how the charge will appear on the telephone bill
 - Information related to whom to call (and the appropriate toll-free telephone number) for inquiries
- E. The documented authorization should be retained for a period of not less than 2 years.
- F. Upon request, the documented authorization should be made available by the Service Provider to the LEC, regulatory or government agency, or End-user Customer in a timely manner.
- G. Failure to comply with the above provisions should be considered a breach of contract, for which the B&C contract may be terminated.

III. Disclosure of Information

- A. Each LEC should consider providing various categories of information upon request to those federal and state public utility commissions and law enforcement agencies that request such information, as well as to other LECs. The LEC should consider providing this data at the subCIC level, if available. Examples of such information could include:
1. A description of the specific practices relating to cramming that the LEC has encountered, and the steps being taken by the LEC to deal with such practices. This is intended to be general information that does not identify the entities that have allegedly engaged in the described practices.
 2. The identity of Service Providers either terminated or notified of a need to cure due to cramming related problems.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

3. Aggregate escalated complaint data, by billing and collection customer, received by the LEC. Escalated complaints are those complaints issued by the End-user Customer to any regulatory or law enforcement agency (such as the FCC, FTC, a state Attorney General, or a public utility/service commission), or to a LEC executive officer or news organization.

Aside from the beneficial regulatory and law enforcement goals that the disclosure of such information would serve, the LECs have a significant interest in obtaining the information submitted by others that relates to the LECs' current billing and collection customers as well as prospective billing and collection customers. Among other things, such information would permit the LECs to do the following:

1. Develop more efficient, effective and less costly methods for detecting, preventing and eliminating cramming.
2. Reduce the costs to End-user Customers and the LECs associated with cramming.
3. Better evaluate the cramming risks posed by prospective billing and collection customers.

It should be emphasized, however, that the decision of what, if any, action to take based on the information obtained from this process is an individual company decision to be made by each LEC unilaterally.

- B. The Clearinghouses and Service Providers should consider collecting and disclosing similar data to that described in Section III.A., above.

IV. End-User Customer Dispute Resolution Process

Each LEC should consider establishing an End-user Customer Dispute Resolution Process. For example:

- A. With respect to charges for which failure to pay will not result in disconnection of local telephone service (e.g., non-deniable), the LEC should consider responding to End-user Customer complaints of having been crammed with an immediate recourse adjustment (i.e., the End-user Customer will not be requested to contact the Service Provider).
- B. Once the charges have been removed from the End-user Customer's telephone bill, they may not be re-billed by the Service Provider via the local telephone bill.
- C. If the End-user Customer contacts the Service Provider, rather than calling the LEC, with a complaint of having been crammed, the Service Provider must agree to provide a credit adjustment to the telephone bill. Any further collection attempts on the part of the Service Provider should not involve the telephone bill.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

- D. Credit adjustments (for any charges that were originally billed via the telephone bill) should be applied to the End-user Customer's phone bill. The adjustment should not be provided via a check paid directly to the End-user Customer, unless otherwise specified by a regulatory or government agency or unless the End-user Customer no longer has a billing account with the LEC.
- E. The LEC reserves the right to adjust the End-user Customer's telephone account for any non-deniable charges that remain on the End-user Customer's account and are unpaid for greater than 90 days.

The LEC should also recognize the potential for abuse by End-user Customers in the dispute resolution process and should take this into account in developing appropriate dispute resolution mechanisms.

V. Enforcement of Compliance with Existing Laws by Government Agencies

Upon appropriate request from regulatory, government, and/or legislative bodies, the LEC should provide documentation regarding Service Provider billing and collection contract violations.

VI. Bill Format

An End-user Customer's rights will be upheld and the End-user Customer's telephone service will not be disconnected for failure to pay non-deniable charges. Prior to disconnection of service for other appropriate reasons, an End-user Customer rights/advisory message should be displayed on the bill or other notification upon which the non-deniable charges appear.

The LEC should consider modifications to the Bill Format that include:

- A. Each Service Provider and any of their subCICs should be adequately identified on the End-user Customer's telephone bill.
- B. The bill pages should adequately display the toll free number that the End-user Customer is to call with any questions, requests for credit, etc.
- C. Non-deniable charges should be uniquely identified as such.

VII. Consumer Billing Controls

The workshop participants believe that consumers should have the ability to avoid the inclusion of unauthorized service or product charges on their local telephone bills. The LEC should consider retaining the right, at the request of an End-user Customer, to limit which End-user Customers may receive billing as a result of a B&C contract.

(Continued)

ANTI-CRAMMING BEST PRACTICES GUIDELINES

The workshop participants recognize that there are significant implementation issues associated with such controls. Needed mechanization presents significant technical challenges and costs and will require an extended period of time to implement. To avoid abuse by consumers, a method to notify Service Providers would have to be developed for use in conjunction with allowing consumers the ability to "block" billing on the LEC bill. Most importantly, to effectively block at a Service Provider level, there would have to be a universally assigned, nationwide subCIC designated for each Service Provider. This is an industry wide issue.

Despite these challenges, however, consumer-designated billing options can be an extremely powerful method of controlling third party cramming on the LEC bill and should be actively pursued.

Individual LECs may opt, in the short-term, to implement internal processes that would give consumers some limited control over miscellaneous charges and their appearances on a LEC bill.

VIII. End-user Customer Education

The workshop's participants recommend the following as potential End-user Customer education initiatives:

- A. Bill Inserts - Develop a bill insert that reinforces knowledge and education on "how to read the LEC bill," defines cramming and advises the End-user Customer on what can be done to avoid being crammed, who to call if they do get crammed, what to expect, etc.
- B. Page Left Intentionally Blank - Utilize the "this page left intentionally blank" pages of the End-user Customer's bill, in the same manner as described for bill inserts in section VIII.A, above.
- C. Web Page - Modify the LEC's WWW page to include an End-user Customer advisory message regarding cramming, as described above.
- D. Telephone Directories - Develop text for printing in the "useful information" portion of the LEC's telephone directories, to contain the same type of information described above.

MEMORANDUM

July 21, 1998

TO: PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS MEMBERSHIP LIAISONS

FROM: JOHN NEUMANN, Investigator 
LINDA L. ALGAR, Investigator 
Permanent Subcommittee on Investigations

VIA: TIMOTHY J. SHEA, Chief Counsel/Staff Director 
Permanent Subcommittee on Investigations

RE: "CRAMMING": AN EMERGING TELEPHONE BILLING FRAUD

I. Introduction

Telephone "cramming" - the billing of unauthorized charges on a consumer's telephone bill - is now a common telephone-related complaint. Like "slamming" - the unauthorized switching of a consumer's long distance service provider, cramming often involves fraudulent companies that bill consumers for services that they did not authorize.

II. Telephone Cramming Is An Emerging Consumer Complaint

Recently, the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), various state agencies, and consumer groups, have begun to warn consumers about the emergence of telephone cramming.

The FCC reported that telephone cramming is now the 12th highest complaint received by their National Call Center. Between October 1, 1997 and April 30, 1998, the Call Center received over 15,000 complaints from consumers about telephone cramming (including 57 complaints from Maine callers). In December 1997, the FCC published a fact sheet about invalid or unclear charges appearing on local telephone bills and what consumers can do if they discover such charges. The FCC recently began an inquiry into the causes behind invalid or unclear charges on bills rendered by local telephone companies on behalf of other companies. At PSI's April 23, 1998 hearing on slamming, FCC Chairman William Kennard testified that "cramming is the next major consumer protection issue that we have got to deal with."

The FTC recently established a "Cramming Information Line" for consumers to call in their cramming complaints. Since October 1997, the FTC received over 6,000 cramming complaints from consumers, making it the 5th highest complaint it receives. While the FTC does not intervene in individual billing disputes, it encourages consumers to file a complaint with the FTC to help its

law enforcement efforts. The information collected by the FTC is kept in a fraud database, which can be accessed by numerous federal and state law enforcement agencies to aid in cramming and other enforcement efforts. Currently, over 200 law enforcement entities access the FTC's fraud database.

The National Consumers League (NCL), an organization that has taken an active role in educating consumers about telephone-related fraud and abuse, is also warning consumers about the emerging scam of telephone cramming. In November 1997, the NCL issued a press release to warn consumers about the increase in the number of incidents of "all kinds of mysterious phone charges suddenly popping up on bills." In the first six months of 1998, over 2,070 consumers complained to the NCL about cramming, making it the highest complaint the NCL receives. Cramming complaints to the NCL now outnumber slamming complaints by two-to one.

III. What is Cramming?

According to the FTC, which has federal jurisdiction over unfair, deceptive and fraudulent trade practices, telephone cramming "refers to unexplained charges on your phone bill for services you never ordered, authorized, received, or used."¹ These charges can include:

- one-time charges for entertainment services, such as a "900 number" calls;
- monthly recurring charges for club memberships, such as psychic clubs or travel clubs; and,
- monthly recurring charges for telecommunications products and services, such as voice mail, paging, and calling cards.

Increasingly, the telephone bill is being used to deliver and charge for services other than those provided by traditional local or long distance telephone carriers. Included among these non-traditional services are telephone-based audio information or entertainment programs such as horoscopes, sports information, and "adult" chat lines – known in the telecommunications industry as "audiotext" services. Cramming occurs when the consumer is billed for such services without knowingly giving their authorization to the service provider.

¹Both the FCC and the FTC use similar definitions of cramming. The NCL only includes non-toll, monthly-recurring, and miscellaneous charges in their definition of cramming.

IV. How Does Cramming Occur?

Local telephone companies serve as billing agents for many long distance and information service providers. In addition, billing consolidators also serve as intermediaries between providers and the local telephone companies. Invalid or unclear charges can occur when a long distance telephone company, information services provider, or the billing consolidator sends inaccurate billing data - whether through oversight or intentionally - to the local telephone company. The local telephone company, in turn, bills consumers for the calls or services. Sometimes the charges may be legitimately imposed by a company, but may be insufficiently described on the local telephone bill, confusing the consumer. Other times, the charges are described in a deceiving manner to avoid detection by the consumer.

The FTC has identified a number of cramming schemes that consumers should be aware of. Many of these scams occur through the use of an 800 number or initiated by contests or sweepstakes. For example, in one scam, when calling an 800 number advertised as a free date line, psychic line, or other adult entertainment service, a recording prompts the consumer to give his or her name and to say "I want the service," to get the advertised free service. However, they are automatically enrolled in a club or service program and the phone number from which they call is captured and billed. In another type of cramming scam, consumers fill out a contest entry form, thinking they're entering to win a prize. The fraudulent company uses the entry form to get consumers' phone numbers and then enrolls them for a calling card or some similar service, which is billed through the consumer's telephone bill.

The NCL reported that cramming often occurs in connection with other illegal activities such as fraudulent 900 numbers and other pay-per-call schemes. In other cases, charges that appeared on consumers' telephone bills were purposely described in a vague or misleading manner, such as "calling card plan," "membership services," or "service fee" to avoid detection by the consumer.

The NCL provided the following examples of typical cramming reports they have received:

- A Texas woman received a "negative option" letter congratulating her for enrolling in a buying plan to purchase merchandise at discounted prices. She never asked for it, but the letter indicated that a \$5 monthly membership fee would be charged to her local phone bill unless she contacted the company to cancel.
- A Washington man received an e-mail from a company informing him that he would be charged \$5.95 on his phone bill to link the Internet to his fax machine and deliver his e-mails by fax. He never requested this service.
- A Missouri woman was surprised to find a \$39 charge on her phone bill for a calling card from a company she never heard of or for a card she never requested.

- An Indiana woman who called a psychic hotline did not expect \$50 in charges for a "club membership" to subsequently appear on her phone bill.

According to NCL, aside from having a consumer's telephone number, one of the ingredients to a successful cramming scam is that the monthly charges which appear on a consumer's bill are typically very low and are very vaguely described, only noticed by alert consumers. The charges do not readily stand out, and often a consumer will pay the charges for many months. For example, one consumer received a monthly recurring charge on their bill for a "MONTHLY AXCES CHARGE" in the amount of \$3.98. The charge is relatively low, and the name of the company allegedly providing this service was "AXCES, INC." This is deceptive because consumers can be legitimately billed for "monthly access" charges for participation in a long distance calling plan.

Once the consumer discovers the cramming, the process of receiving credit and ensuring that charges do not recur is challenging and time consuming. The NCL has received complaints from consumers that they are mistreated by the cramming company or the billing consolidator when they attempt to have charges removed. Consumers are placed on hold for long periods of time, hung-up on, lied to, and threatened with collection or termination of telephone service by the cramming or billing company. Often consumers are promised credits which they never receive, or if a credit is received for previously recurring charges, similar charges may appear a month or two later.

The telephone billing industry believes that some of the consumer complaints they receive about cramming are due to insufficiently described charges. One possible reason for this is that most local telephone company billing systems do not have the capability to include more than a limited number of characters to describe charges on customers' bills. For example, some Bell companies are limited to 12 characters, which may be insufficient to properly describe a service that is being billed to the customer through their local telephone bill. So a monthly fee charged to the customer for the use of "1+ dialing,"² may be described as "monthly fee" on a customer's bill. The customer has no idea what the monthly fee is for, so they call up the local telephone company and complain that they did not authorize the monthly fee. Or the customer did not realize that a monthly fee would be charged for the use of this service. The industry is in the process of upgrading their billing systems to expand the description field to as many as 36 characters, which may help reduce the number of cramming complaints due to customer confusion. While insufficiently describe charges may be responsible for some of the cramming complaints, representatives of the telephone billing industry admit that there is a growing number of cramming complaints that are the result of charges being fraudulently billed to consumers' telephone bills.

²"1+ dialing" is service offered to consumers by long distance companies, on a per call basis, usually at rates that are lower than the major long distance companies. The customer accesses this service by dialing a series of digits, beginning with the number "one," before dialing the long distance number they are calling. Often, the provider charges a monthly fee for the use of this service.

V. What Efforts Are Being Made to Stop Cramming?

A. Federal Efforts: Currently, neither the FCC or FTC have any regulations that directly and specifically preclude the billing of unauthorized telephone charges. At the direction of Congress, both the FCC and FTC adopted regulations governing pay-per-call services, such as 900-numbers. The "900-Number Rule,"³ adopted in 1993, established procedures for resolving customer billing disputes for such calls, including the right of the customer to not pay any disputed charges for 900-number calls pending investigation by the provider of the service.

Both the FCC and FTC have jurisdiction over parts of the cramming problem. While the FCC does not currently regulate telephone billing practices, it has the authority to do so, provided the company is a telecommunications carrier. The FCC can take enforcement action against companies that violate its regulation that generally prohibits common carriers from "any unreasonable or unjust charges and practices in connection with a communications service." In addition, certain types of charges that are crammed onto consumers' bills, such as 900-number and other pay-per-call services, are governed by existing FCC rules. The FCC recently issued a challenge to the major local telephone companies to encourage them to voluntarily adopt billing guidelines to control the number of cramming incidents. The FCC has advised these companies that if they do not come up with guidelines that effectively reduce the number of cramming incidents, the FCC will have to establish regulations for billing practices. In his remarks at billing industry forum on cramming, Glenn Reynolds, Legal Counsel for the FCC's Common Carrier Bureau, stated:

"Having emphasized the Commission's preference for an industry-initiated solution, it is emphasized that if significant steps are not taken by the industry, and significant results are not achieved..., the Commission will take aggressive enforcement action in the near future. The FCC remains cautiously optimistic that the industry can and will find a way to eliminate this consumer fraud. But the Commission stands by to act if necessary."

The FTC has the authority to stop "unfair or deceptive acts or practices in or affecting commerce." The FTC can take enforcement action against any person or company that uses deceptive practices, including those that engage in cramming. The FTC can file a complaint in Federal court against a person or company when it has "reason to believe" that the law has been or is being violated.

Both the FCC and FTC have only recently begun taking action against companies that engage in cramming. A large increase in the number of cramming complaints to those agencies began in late 1997 and early 1998, so several companies are still under investigation. In April 1998, the FTC filed a complaint against three California-based companies for cramming. The companies allegedly violated the FTC's rules, which prohibit unfair or deceptive trade practices, by making false

³16 C.F.R. Part 308.

representations that consumers authorized purchases and that consumers were obligated to pay for services they did not purchase. Based on the complaint, the defendants agreed to stop billing consumers for their 800-number-based audio entertainment or information services. On July 16, 1998, the FTC announced that it had initiated enforcement actions against four companies that used deceptive practices to cram charges on consumers' telephone bills. (See attached Washington Post article, Exhibit 16.)

The FCC is in the process of completing its investigation of several companies for cramming, and hopes to announce its enforcement actions shortly. The FCC has recently changed its process for initiating investigations for both slamming and cramming. In the past, the FCC relied on formal, written complaints from consumers before initiating enforcement actions. Over the last few months, the FCC began using its National Call Center data to quickly determine which companies are engaging in fraudulent practices, such as slamming and cramming, and is using this information to quickly initiate investigations.

According to representatives from the FTC and FCC, some of the same companies that have been involved in slamming consumers are now cramming them. As the FCC and state regulatory bodies stepped up their efforts to stop slamming, some fraudulent companies have turned to cramming, taking advantage of the minimal regulation of telephone billing practices. Since federal and state enforcement agencies have only recently taken action against companies for cramming, there has not been enough information developed about the companies that are responsible for fraudulently billing consumers for unauthorized charges.

A gap in federal cramming enforcement efforts may exist due to jurisdictional issues between the FCC and the FTC. According to FTC representatives, the FTC only has the authority to take action against information providers, billing consolidators, or marketing companies for deceptive practices, and not against telecommunications carriers. The FCC, on the other hand, only has jurisdiction over telecommunications carriers. While the FCC has the legal authority to regulate billing by telecommunications carriers, it has chosen to deregulate this activity in order to promote competition. If the FCC adopts regulations on telephone billing practices, such regulations would only govern the activities of telecommunications carriers, and not other service providers that bill through local telephone bills. FTC representatives have stated that this jurisdictional limitation hinders the FTC's cramming enforcement actions against companies that are classified as telecommunications carriers, even if they are engaging in deceptive marketing practices. The FCC currently does not have any rules specifically prohibiting deceptive marketing practices by telecommunications carriers. The FCC and FTC are now looking for ways to work together to take enforcement actions against companies that engage in deceptive telephone practices, such as cramming and slamming.

In addition to enforcement efforts, the FCC and FTC have developed consumer awareness programs to help fight cramming. Both agencies publish brochures and have Internet sites that tell consumers what to do if they have been crammed.

B. Industry Guidelines: At the urging of the FCC, the telephone billing and collection industry, which includes local exchange carriers and billing consolidators, is in the process of developing voluntary guidelines to prevent cramming. Representatives of the Bell companies have held several meetings over the last two months to develop such guidelines. The goal is to finalize anti-cramming guidelines by the end of July 1998. Billing companies have also participated in the process to develop anti-cramming guidelines. Some of the measures that have been included in the draft guidelines include:

- defining acceptable products that the industry will bill for;
- reviewing service providers' marketing practices before agreeing to bill for them;
- requiring that providers use some reliable method, such as third party verification, to get customer authorization for charges before submission to local telephone or billing company;
- using a complaint measurement standard to determine when to stop billing for a particular provider; and
- exchanging information among industry about fraudulent providers.

Some representatives of the billing industry expressed concern that unless these guidelines are universally adopted, they will not be successful in reducing cramming complaints. Also, the Bell companies will require such procedures for third-party billing, but will not necessarily follow these procedures for their own in-house miscellaneous services, such as voice mail, Internet connection, etc. If all other entities are required to go through costly verification methods to sell miscellaneous services to consumers, the Bell companies may be at a competitive advantage if they themselves do not use verification methods to sell their own services. The FCC may have play a more active role to ensure uniform adherence of these voluntary cramming guidelines, in order to promote competition and prevent fraudulent providers from billing charges through companies that do not adhere to the voluntary guidelines.

On May 6, 1998, Bell Atlantic announced a crackdown against companies that cram consumers with illegitimate charges. Pending industry-wide guidelines, Bell Atlantic will not bill for any new services or providers until cramming is under control. In addition, Bell Atlantic will automatically issue a credit to any consumer who calls to complain that they have been crammed, and charge the amount back to the company that billed it.

On July 13, 1998, representatives of the telephone billing industry presented the draft anti-cramming guidelines to members, federal and state agencies, consumer groups, and congressional staff. Based on comments filed by all interested parties, the group will issue final guidelines within the next several weeks.

C. Pending Legislation: Several bills were introduced in Congress over the last few months which would impose new requirements on telephone billing, in an attempt to limit the ability of companies to "cram" consumers telephone bills with unauthorized charges.

On May 12, 1998, the Senate passed legislation (S. 1618) to reduce slamming, which included several provisions designed to reduce cramming. The bill amends the Communications Act of 1934 and prohibits the "knowing inclusion of unauthorized or improper charges" on a customer's telephone bill. (Cramming would then be a violation of FCC regulations, punishable by any civil remedies available to the FCC.) The bill also requires billing agents, including local exchange carriers, to provide complete information about all charges on a customer's telephone bill, including the name of any company whose charges are reflected on the bill, a description of the services provided, and a toll-free number that the customer can use to dispute those charges. The bill provides that disputes of charges for other services (besides telephone exchange service or telephone toll service) may not result in disruption of a customer's phone service. In addition, the bill gives the FCC jurisdiction over all entities that bill through customers' telephone bills. Representative Billy Tauzin (R-LA) introduced the exact same provisions in House anti-slammng legislation (H.R. 3888) on May 14, 1998. Telephone industry representatives, including the United States Telephone Association (USTA) and representatives of the billing industry, are concerned about vague language in this bill which requires that if billing entities "know or should have known" that a charge to a consumer's bill is unauthorized, then the local telephone or billing company could be charged with violating this provision. The industry claims that this unfairly puts the burden of obtaining proper authorization on the billing entity, rather than on the cramming company, which should have that responsibility.

On June 4, 1998, Representatives John Dingell (D-MI) and Bart Gordon (D-TN) introduced the "Anti-Cramming Protection Act of 1998" in the House (H.R. 3990). Like H.R. 3888 and S. 1618, the bill requires certain information be included on customers' telephone bills. However, this bill directs the FTC, rather than the FCC, to prescribe rules to protect consumers from cramming. Specifically, the bill prohibits any person from submitting miscellaneous products or service charges on telephone bills without the customer's authorization. It also requires providers to get authorization from the customer by obtaining the customer's unique account authorization code. In addition, the bill allows local exchange carriers to discontinue billing for any providers that submit charges in violation of these provisions. The telecommunications industry also is concerned that this bill may require the billing entities to get customer authorization, rather than the company providing the service.

D. State Actions: According to representatives of the National Association for Attorneys General (NAAG), a number of states have begun to take quick and aggressive action against companies for cramming. For example, in October 1997, has the Iowa Attorney General ordered a Texas company to stop mailing negative option solicitations to Iowa businesses for an 800-number directory - for a \$9.95 per month charge to their telephone bills. The Minnesota Attorney General also took quick action against the same company, getting them to pay a fine and discontinue their deceptive practices. In another anti-cramming action in May 1998, the Idaho Attorney General

stopped a for-profit company from misleading consumers into believing that it was a charitable organization conducting a non-profit sweepstakes contest. When consumers filled out the sweepstakes entry forms they were automatically signed up for voice mail service. Other states, such as Illinois and West Virginia have also recently initiated actions against companies for cramming.

In addition, several states have passed, or are considering, legislation to regulate billing practices to prevent cramming. For example, Idaho passed legislation that requires consumers to be notified if new services are added to their telephone bills, allowing them three days to cancel without incurring charges. The law also requires that the service provider obtain the consumer's verified consent before adding services. In March 1998, the Illinois Senate Environment and Energy Committee unanimously approved legislation that would prohibit the use of sweepstakes or contest promotions to add telephone services to consumers' telephone bills, including voice mail, personal 800-numbers, and calling cards. States, such as Illinois, are using existing deceptive business practices laws to take immediate action against crammers.

VI. Cramming Hearing

PSI will hold a hearing to raise consumer awareness and determine what is being done to control the emerging problem of telephone "cramming" - the billing of unauthorized charges on a consumer's telephone bill. The hearing will not be the result of an in-depth PSI investigation, but will simply 1) highlight the scope and nature of cramming, 2) educate consumers about cramming, 3) determine what is being done to control the practice, and 4) explore further regulatory and legislative remedies that can be implemented to stop cramming.

Witnesses will include:

1. Consumer Group Representative: Susan Grant, from the National Consumer's League will discuss consumer complaints about cramming, what consumers can do to protect themselves from unauthorized charges, and what changes need to be made in telephone billing practices to control cramming;
2. Telephone Industry Representative: A representative from USTA (Roy Neel) will discuss the telephone billing industry's efforts to control cramming, focusing on the anti-cramming guidelines being developed by key representatives of the industry;
3. FCC Representative: Larry Strickling, Deputy Chief of the FCC's Common Carrier Bureau (the Bureau responsible for telephone regulations and enforcement), will discuss FCC's anti-cramming efforts, including consumer awareness programs, pending enforcement actions, and efforts to encourage industry guidelines to prevent cramming; and

4. **FTC Representative:** Eileen Harrington, Associate Director for Marketing Practices, will discuss FTC's efforts to stop cramming, including consumer awareness and enforcement actions. She will also discuss additional legislative changes that may be required to enable FTC to take enforcement actions against all companies, including telecommunications carriers.

The hearing will be held on July 23, 1998 at 9:30 am, which will coincide with several new developments in the government's and industry's efforts to fight cramming. The telephone billing industry is planning to finalize its anti-cramming guidelines by the middle to end of July. On July 16, 1998, the FTC announced cramming enforcement actions that it is taking against two companies. The FCC will also likely announce a major enforcement action against a company that engaged in cramming by the end of July. In addition, the House may take action on legislation that would require certain changes in telephone billing practices sometime in late July.

JN:mdr

M:\PST\CRAMMING\MEMOS\BACKGRND.Staff Liaisons.wpd



Senate Permanent Subcommittee
on Investigations

EXHIBIT # 6

1701 K Street, NW • Suite 1200 • Washington, DC 20006 • (202) 835-3323 • FAX (202) 835-0747 • <http://www.natconsumersleague.org>

Board of Directors

Linda F. Golodner
President

Brandolyn T. Clanton Pinkston
Chair
Charlotte Newton
Vice Chair
Esther Shapiro
Vice Chair
Markley Roberts
Treasurer
Don Rounds
Secretary
Jack A. Blum
Counsel

Robert R. Nathan
Honorary Chair
Esther Peterson (1906-1997)
Honorary President

Erma Angevine
Dorothy M. Austin
Debra R. Berlyn
Alan Bosch
Jim Conran
Ellen C. Craig
Theodore R. Debro, Jr.
Joseph K. Doss
Evelyn Dubrow
Glenn English
Mary Finger
Carolyn Forrest
Eugene Glover
Ruth Harmer-Carew
Pastor Herrera, Jr.
Mary Heslin
Arlene Holt
Ruth Jordan
Jane M. King
Harry Kranz
Jorge J. Lambrinos
Odonna Mathews
Robert N. Mayer
Joyce Miller
Larry Mitchell
Patricia Royer
Bert Seidman
Samuel A. Simon
Caroline B. Stellmann
Ricki Stochaj
Leland H. Swenson
Patricia Tyson
Barbara Van Blake
Gladys Gary Vaughn
Clair E. Villano

August 26, 1998

Timothy J. Shea
Chief Counsel and Staff Director
Permanent Subcommittee on Investigations
U.S. Senate Committee on Governmental Affairs
Washington, DC 20510-6250

Dear Mr. Shea:

Thank you for asking the National Consumers League to provide additional information regarding telephone cramming. We would like our answer to the supplemental questions submitted by Senator Max Cleland to be included in the record of the July 23 hearing on this subject. The questions and our answers are as follows:

1. **Given the fact that cramming can be easily overlooked by consumers, do you believe that an insert in local phone bills explaining cramming, showing an example of this fraud, and displaying a phone number to call if he or she has questions would be helpful to consumers? Do you have other suggestions to raise consumer awareness?**

In light of the fact that most telephone bills already entail several pages, we are concerned that billing inserts about cramming might be just as easily overlooked as the cramming charges themselves. Certainly, using billing inserts to warn telephone customers about cramming would do no harm. However, a separate mailing informing consumers about the problem and explaining what the local telephone company is doing to combat it might get more attention. In addition, there should be information in the appropriate section of each month's phone bill about charges for optional services and how to inquire in that regard.

2. **What suggestions do you have for verification of third-party billing?**

All current forms of verification are open to abuse. Our National Fraud Information Center receives many reports from consumers about forged written authorization, doctored audio taped authorization, and welcome packets for services that consumers had never requested. Consumers are also victims of fraudulent verification schemes when they are lured to call a number by a misleading ad or a message left on an answering machine and their phone numbers are captured by automatic number identification (ANI).

Representing Consumers for 99 Years

Printed on Recycled Paper

The best verification procedures are those that employ live operators that are not paid on commission and who can actually have meaningful exchanges with consumers. However, most verification systems are designed to simply offer documentation that there was a purchase agreement *after* the fact, if the consumer disputes the charges. They are not really designed to ensure that the consumer has agreed to the purchase *before* the charges are placed on the bill.

One way to provide greater assurance in that regard might be a personal identification number (PIN) system. In such a system, consumers would be assigned unique identifiers when they initially get their phone service and would provide the PIN to a vendor in order to bill services to their accounts. Another suggestion that we have made is that the billing entity -- the local telephone company -- attempt to verify the consumer's purchase. This could be done by requiring the local telephone companies to notify consumers by phone or in writing as soon as a service provider has requested that the consumers be billed for optional services and giving those consumers the opportunity to object if the services were *not* authorized.

We also support the development of systems that would give consumers the option of automatically blocking third-party charges unless they have instructed the local telephone company directly to add those charges to their bills.

3. Do you believe that there should be any restrictions placed on the use of Automatic Number Identification (ANI)?

As we previously stated, consumers can be tricked into making calls and having their numbers captured by ANI. Not only does ANI fail to provide any meaningful evidence of a consumer's intention to purchase a service, but it also does not indicate whether the person making the call is the account holder or someone else -- a child, a roommate, a guest, or someone else who is not responsible for the bill. While ANI is a helpful tool in customer service, we do not believe that it should be used as verification of telephone-billed purchases.

Again, thank you for asking for our input on solutions to this egregious example of telephone-billed fraud. We will be happy to continue working with the subcommittee on solutions to the cramming problem.

Sincerely yours,



Susan Grant, Vice President
Public Policy



Senate Permanent Subcommittee
on Investigations



September 4, 1998

The Honorable Max Cleland
United States Senate
Government Affairs Committee
Permanent Subcommittee on Investigations
100 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Cleland:

I appreciate the opportunity to respond to your supplemental questions regarding the "cramming" hearing held in the Permanent Subcommittee on Investigations on July 23, 1998. As you may have gathered from my testimony, the United States Telephone Association (USTA) and its member companies (of which there are approximately 1,200) take "cramming" very seriously. Not only does it harm consumers, but for the vast majority of providers that operate their businesses both lawfully and ethically, "cramming" by a small handful of "bad actors" seriously impairs my membership's ability to serve their customers.

I want to reiterate that even a small percentage of "cramming" is too much. Because of this, the local exchange industry is committed to the eradication of this blight. We believe that the voluntary industry guidelines go a long way toward that end — this self-policing tool is designed to meet the problem head-on, flexibly, in a manner that does not call for government fiat.

Please accept the following text as answers to your questions. Of course, should you have further questions, please feel free to call me at 202-326-7244.

Question #1- *Given the fact that cramming can be easily overlooked by consumers, do you believe that an insert in local phone bills explaining cramming, showing an example of this fraud, and displaying a phone number to call if he or she has questions would be helpful to consumers? Do you have other suggestions to raise consumer awareness?*

Answer #1 - Admittedly, telephone bills can be difficult to read. This is due in part to the wide range of information that local telephone companies are required to include on each telephone bill. Realizing this, many local telephone companies are working to make these bills more "consumer friendly." In the Best Practices Guidelines, bill inserts are offered as one of the

several optimal approaches to educate end-users. Web pages and telephone directories are two other vehicles that have been recommended. Heightened consumer awareness is a key ingredient in alleviating "cramming" abuse. Among other things, companies use this means to maintain customer loyalty and satisfaction. Nationwide, numerous companies presently sponsor various pro-consumer awareness campaigns, urging customers — through widely distributed print and electronic media — to pay more attention to their bills and, importantly, the charges for services contained within them. USTA, too, has been active in encouraging greater consumer participation surrounding their bills, as can be seen in our own web page (see attachment #1).

Question #2 - *What is the usual screening process that Local Exchange Carriers (LECs) use before entering into an agreement with a company that will place their charges on local service phone bills?*

Answer #2 - Not surprisingly, there is no standard or usual practice. It should be noted, however, that the Best Practices Guidelines capture what many companies have already found to be effective in screening products and service providers. The workshop participants did an excellent job of setting forth a comprehensive list of options to be considered by the local telephone companies as ways to screen for problematic products, services and programs. For greater depth to your query, please refer to Section I-A ("Screening — Products and Service Providers") on pages 4 - 5 of the Best Practices Guidelines.

Question #3 - *Have you heard from any LECs who plan on not participating in the FCC's best practices? If so, what are the reasons given for this lack of participation?*

Answer #3 - The Best Practices Guidelines were developed primarily by the LEC industry, with valuable input from the FCC, other government entities, and consumer groups. To my knowledge, only one company (an independent LEC in Illinois) has expressed its strong reservations about the nature of the guidelines. In that instance, the company's representative was concerned that these guidelines could actually lead to the re-regulation of telephone billing collection — services deregulated over ten years ago by the FCC because they are not common carrier services. USTA sent the guidelines out to its full membership for review and consideration. USTA will be conducting a seminar with its members this month concerning "cramming" and the Best Practices Guidelines. Member responses indicate that the guidelines provide the necessary tools to flexibly deal with "cramming" in a way that best suits each company's circumstances and the needs of their customers. My members want and need the flexibility provided within these guidelines. The ways in which "bad actors" "cram" will change over time, and telephone companies need to have the flexibility to address these new scams.

Question #4 - *What suggestions do you have for verification of third-party billing?*

Answer #4 - The Best Practices Guidelines call upon telephone companies to consider requiring from its service providers — the entities closest to the service charges and changes — verification

either through voice recordings, written and signed documents, or independent third-parties. Additionally, some companies have begun to offer customers the ability to limit what charges they may actually receive on their phone bills. Other verification solutions — such as PIN numbers — may become technically and economically feasible down the road (this is not now the case). Importantly, the guidelines present several options that can be employed by each telephone company to best fit the type and degree of fraud that is being encountered and which best meet the needs and desires of their customers.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy M. Neel". The signature is written in a cursive style with a large initial "R" and a long horizontal stroke.

Roy M. Neel
President and CEO
United States Telephone Association

cc: Senator Susan Collins
Permanent Subcommittee on Investigations

TelecomPolicy.net
Slamming & Cramming

TelecomPolicy.net

Slamming & Cramming

- Competition
- Deregulation
- Universal Service
- Innovation
- Slamming & Cramming**
- Numbering Plans
- Community Investment
- Home Page

Overview
Deregulation of the telecommunications industry brings more options to the consumer for a wide variety of services, including local and long distance, Internet, cable and other services. Unfortunately, some unscrupulous and crafty entrepreneurs have resorted to marketing scams and deceitful methods to recruit new customers. Two such examples are slamming and cramming.

Slamming is defined as changing a consumer's long distance carrier without the customer's knowledge or consent. Cramming is the illegal practice of adding charges to a consumer's phone bill for products or services without proper authorization from the customer.

The local telephone industry has a zero-tolerance policy with regards to any telecommunications-related fraud committed against consumers. Local phone companies are taking an active role in preventing fraud, and are also taking steps to educate consumers about how they can protect themselves from these scams.

Bills in Congress
H.R. 4176 Digital Jamming Act of 1998. A bill to amend the Communications Act of 1934 to improve protection of consumers against slamming, cramming, and spamming.
[Check bill status](#)

S. 1618 A bill to amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes.
[Check bill status](#)

H.R. 3888 A bill to amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes.

Recent Developments

[July 23, 1998 - Testimony Of Roy M. Neal, President And Chief Executive Officer United States Telephone Association](#)

[July 23, 1998 - Consumers, Law Enforcement, Bell Atlantic Join Forces to Combat Telemarketing Fraud](#)

[July 22, 1998 - USTA Announces Telecommunications Industry Policy to Combat Cramming](#)

[July 22, 1998 - Local Exchange Carrier Industry 'Best Practices' To Combat Cramming](#)

[July 22, 1998 - U.S. WEST Uses "3 Strikes & You're Out" Policy To Crack Down on "Crammers"](#)

[July 22, 1998 - Bell Atlantic Launches New Attack on "Cramming;" Customers Can Limit Which Providers Appear on Bill](#)

[June 30, 1998 - New Bell Atlantic "Cramming" Policy Kicks In July 4](#)

Developments Archive

The Details
[Slamming: Know Your Rights](#)
[Cramming: Tips to Protect Yourself](#)

Check bill status

HR. 3050 A bill to establish procedures and remedies for the prevention of fraudulent and deceptive practices in the solicitation of telephone service subscribers, and for other purposes.

Check bill status

H.R. 3749 A bill to amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes.

Check bill status

H.R. 3990 A bill to amend the Telephone Disclosure and Dispute Resolution Act to prevent unfair and deceptive practices in telephone billing for miscellaneous products or services.

Check bill status

H.R. 3798 A bill to amend section 258 of the Communications Act of 1934 to protect telephone consumers against "cramming" of charges on their telephone bills.

Check bill status

S. 1740 A bill to amend the Communications Act of 1934 to improve the protections against the unauthorized change of subscribers from one telecommunications carrier to another, and other purposes.

Check bill status**Related Links**[FCC Consumer Information](#)[National Consumers League: Make the Call](#)[Ameritech: The Slamming Scam](#)[Bell Atlantic Slamming Policy](#)[BellSouth: Lookout for Business Scams](#)[BellSouth Slamming Policy](#)[GTE Smart Calling Tips](#)[U.S. West Consumer Tips](#)

TelecomPolicy.net

Slamming & Cramming

Competition

Regulation

Universal Service

Innovation

Slamming & Cramming

Numbering Plans

Community Investment

Home Page

Cramming: Tips to Protect Yourself

Complaints about cramming the illegal practice of billing customers for unauthorized services are on the rise. America's local phone companies take their responsibility to customers very seriously, and we are taking steps to prevent this insidious type of fraud. Increasing your awareness of cramming is one way to avoid being victimized.

The Federal Communications Commission and local phone companies across the country have been trying to crack down on this practice, but with increased competition coming to the telecommunications marketplace, the number of cramming complaints continues to grow.

Local phone companies provide billing for other providers so that customers can receive all their telecommunications charges on one bill. This may include long distance, voice mail, security monitoring, and personal 800 numbers, among others.

However, some crafty entrepreneurs are taking advantage of this service and are ripping the consumer off. Often, they use devious ways to get customers to unknowingly sign up for new services the unethical and illegal practice known as cramming. These entrepreneurs are frequently successful in obtaining a signature on a document that has nothing to do with telephone service, such as a sweepstakes entry form. In many cases, there is language hidden in the fine print that authorizes a company to bill you for a new service.

Don't Be A Cramming Victim:

Always review your phone bill carefully. If charges appear for services you did not order, you may be a victim of cramming.

Avoid contests and sweepstakes entries that require your signature that could be all a company needs to sign you up for new services without your knowledge. Always read the fine print on promotional materials before signing anything.

Be aware of services you have ordered. Keep a record of all the telecom services you order, including the date you ordered each service and how much you agreed to pay for them.

If you receive a letter or postcard *verifying* that you have ordered new services but know that you did not, notify the sending company that you did not authorize the change, then call your local telephone company to obtain a list of all services for which you are being billed.

If you have been crammed, contact your local phone company immediately and explain that you did not authorize any new services. Request that the charges be removed from your bill. Call the

company that crammed you and let them know you will not pay for the charges incurred. In the event that you cannot resolve the problem with the phone company that crammed you, file a complaint with the FCC.

Related Links

[FCC Consumer Information](#)

[Bell Atlantic Cramming Policy](#)

[BellSouth Cramming Policy](#)

[GTE Smart Calling Tips](#)

[U S West Tips to Avoid Cramming](#)



Division of Marketing Practices

Eileen Harrington
Associate Director

Direct Dial
202-326-3127

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

Senate Permanent Subcommittee
on Investigations

EXHIBIT # 8

September 2, 1998

Timothy J. Shea
Chief Counsel and Staff Director
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Shea:

This letter is in response to yours of August 12, forwarding Senator Cleland's supplemental questions on "cramming." The answers provided below represent my views and do not represent the views of the Federal Trade Commission or any individual commissioner.

Question 1: Given the fact that cramming can be easily overlooked by consumers, do you believe that an insert in local phone bills explaining cramming, showing an example of this fraud, and displaying a phone number to call if he or she has questions would be helpful to consumers? Do you have other suggestions to raise consumer awareness?

Answer 1: Our first piece of advice to consumers is to read carefully their monthly phone bills to make sure they understand every charge that appears. A billing insert explaining the problem of cramming, and telling consumers what to do if unauthorized charges appear on their bill, would help raise awareness of the problem. Standard-format, easy-to-understand telephone bills would also help consumers recognize suspicious charges. The Federal Communications Commission is developing a "truth-in-billing" program to advance these objectives.

Question 2: How many consumer complaints, on average, are usually required before a potential crammer is investigated?

Answer 2: The staff of the Federal Trade Commission may open an investigation based on one or even no complaints if the alleged practices -- here, unauthorized billing -- are egregious and likely to occur on a widespread basis. While our investigations into potential crammers often reveal a large number of complaints, we do not take a formulaic approach to determine when to investigate. Rather, our concern is to stop practices that are likely to cause significant economic

harm to consumers. At the same time, we do not suffer from a lack of complaints about crammers. Since January 1, 1998, the FTC's Consumer Response Center has received more than 6,000 complaints from consumers who have been crammed. All of the data from these complaints is entered into our database. Our investigators and attorneys have desktop access to this data, and use it to identify new targets and trends.

Question 3: With the deregulation of billing services more than a decade ago, why do you think that cramming is such a recent problem?

Answer 3: Until recently, smaller vendors did not have access to the telephone billing system because local exchange carriers -- "LECs" -- did not want to deal with scores or hundreds of different vendors submitting billing information. The emergence of billing aggregators, who receiving billing information from vendors and put it into an electronic billing record that can easily be used by LECs in preparing their bills, opened the billing system to these smaller vendors. In addition, other payment systems have been made more "fraud resistant" by their operators. For example, it is very difficult for a fraudulent vendor to gain access to the credit card payment system; ten years ago, it was relatively simple for fraudulent vendors to use the credit card payment system. The operators of the telephone billing system have yet to develop meaningful fraud control and risk management procedures. When and if they do, I suspect the unscrupulous vendors who now use cramming will move on to a new method to obtain payment.

Question 4: What is the status of the proceedings of the FTC against International Telemedia Associates (ITA)?

Answer 4: The FTC's motion for preliminary injunction is scheduled to be heard by the United States District Court for the Northern District of Georgia on September 9, 1998. That Court entered a temporary restraining order against ITA in June of 1998, and that order remains in effect.

Question 5: What suggestions do you have for third-party billing?

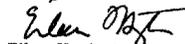
Answer 5: I suggest that vendors be required to produce proof of the customer's express authorization to be billed for every transaction presented to a third party biller.

Question 6: Do you believe that there should be any restrictions placed on the use of Automatic Number Identification (ANI)?

Answer 6: The use of ANI for billing should be prohibited, except for tariffed toll calls and calls to 900 numbers.

Please feel free to contact me if I can be of further assistance.

Sincerely,



Eileen Harrington
Associate Director



Federal Communications Commission
Washington, D.C. 20554

September 24, 1998

Senate Permanent Subcommittee
on Investigations
EXHIBIT 9

The Honorable Susan Collins
Chairwoman
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate
100 Russell Senate Office Building
Washington, D.C. 20510

Attn: John Neumann

Dear Madam Chairwoman:

I am enclosing my responses to Senator Cleland's questions that were sent to me on August 12, 1998, as a follow up to the Subcommittee's July 23rd Cramming hearing. Please contact me if I can provide additional information to complete the hearing record. I look forward to working closely with you to help reduce the incidence of cramming.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence E. Strickling".

Lawrence E. Strickling
Deputy Chief
Common Carrier Bureau

Attachment

**Supplemental Questions for the Record
Submitted by Senator Max Cleland (D-GA)**

**Hearings Before the
United States Senate Permanent Subcommittee on Investigations
July 23, 1998**

"Cramming": An Emerging Telephone Billing Fraud

1. **Given the fact that cramming can be easily overlooked by consumers, do you believe that an insert in local phone bills explaining cramming, showing an example of this fraud, and displaying a phone number to call if he or she has questions would be helpful to consumers? Do you have other suggestions to raise consumer awareness?**

Bill inserts informing consumers about cramming would certainly be helpful in educating consumers about these and other fraudulent practices, and in emphasizing to consumers the importance of carefully examining their telephone bills. At the same time, consumers must be given the tools to enable them to protect themselves from unscrupulous competitors. For example, clear and understandable telephone bills that prominently disclose new charges or changes in service would help consumers to more readily identify those charges or other changes that they have not authorized before making any payment. By stopping the flow of money to companies engaged in cramming, we can, as Chairman Kennard has said repeatedly, "take the profit" out of this fraud.

Due to increased competition and the proliferation of services and service providers, the nature of charges appearing on consumers' telephone bills has changed dramatically. As a result, the Commission has seen a tremendous growth in the number of consumer complaints directly or indirectly arising out of the failure of telephone bills to provide customers with necessary information in a clear and conspicuous manner. As Senator Collins emphasized during the Hearing, even the most sophisticated consumer would often be unable, based on the information provided in the telephone bill, to identify the services for which the consumer is being charged or the providers of those services. Entities engaged in cramming rely heavily on this confusion in order to induce consumers to pay charges for services that were never authorized or received. Similarly, the inability of consumers to readily understand their telephone bills has contributed to the growth of slamming, because it is often extremely difficult to discern from these bills the identity of service providers or when there has been a change in providers. It is also clear from complaints received by the Commission that the victims of these frauds are often frustrated in their efforts to seek relief by the failure of these bills to include information on who to contact to resolve billing problems.

For these reasons, the Commission recently issued a Notice of Proposed Rulemaking seeking comment on how to ensure that consumers receive thorough, accurate and understandable bills from their telecommunications carriers. This Notice proposes generally that bills should be clearly organized and highlight any new charges or changes to the customer's services; that bills should contain full and non-misleading descriptions of all charges that appear and

clearly identify the service provider responsible for each charge; and that bills should clearly provide information the customer may need to inquire about or challenge charges on the bill. The Notice specifically seeks input from the states on how the Commission's efforts in this area can complement their efforts, and from consumer groups and industry members regarding how carriers can best furnish consumers with clear and reliable information. Such information not only raises consumer awareness concerning the risk of fraudulent practices, but is also essential to enabling consumers to reap the benefits of the competitive telecommunications market.

2. Have you heard from any LECs who plan on not participating in the FCC's best practices? If so, what are the reasons given for this lack of participation?

We are unaware of any local exchange companies (LEC) that do not intend to adopt policies implementing the cramming best practices guidelines released by the industry in July. Each LEC will apply these guidelines in a manner which best comports with the company's overall policies, and not every company will adopt every guideline. We fully anticipate, however, that the implementation of these guidelines will result in significant reductions in cramming complaints received by the Commission, and we will be closely monitoring the LECs' success in reducing the level of these complaints. At least two state's regulatory agencies (Washington and Maryland) have submitted to LECs within their jurisdiction inquiries concerning the manner and extent to which those LECs intend to implement the cramming best practices.

3. With the deregulation of billing services more than a decade ago, why do you think that cramming is such a recent problem?

Unlike the related consumer fraud of slamming, cramming is not a direct outgrowth of the development of competition in the telecommunications market. Nonetheless, I believe that entities engaged in cramming have taken advantage of consumer confusion resulting from the proliferation of services and service providers appearing on telephone bills. Accordingly, an essential element in combatting cramming is to ensure that consumers are provided with adequate information to understand their competitive options and protect themselves from unscrupulous competitors.

4. Given the possible need for a rule making or legislative action, is the FCC planning on reporting regularly to Congress on the status of the best practices?

The Commission will be monitoring closely the implementation of the cramming best practices to ensure that they result in a significant decrease in the number of cramming related complaints received from consumers. We can keep Congress apprised of our efforts regarding cramming best practices.

5. What suggestions do you have for verification of third-party billing?

Both the carrier submitting the bill and the relevant service provider (as well as any intermediary in the billing process, such as billing clearinghouses) have a responsibility to ensure that no unauthorized charges appear on a customer's telephone bill. As recommended in the LEC best practices, customer authorization for third-party charges should be verified by the service provider either in writing or through independent verification. At the same time, the company providing the billing services should take reasonable steps to monitor the marketing practices of service providers whose charges appear on its customers' bills. Among others, these steps include auditing the service providers' compliance with verification procedures and terminating its provision of billing services to service providers that are the subject of significant numbers of consumer complaints alleging cramming. A copy of these best practices is attached for your reference.

See Exhibit 4 for a copy of the final version of the Anti-Cramming Best Practices Guidelines referred to in above question and answer.

